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RESPONSE TO COMMENTS

Underground Storage Tank System Regulations
(310 CMR 80.00, 310 CMR 30.000, and 310 CMR 70.00)

STATUTORY AUTHORITY: M.G.L. c. 21O and M.G.L. c. 21C

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LIST OF ACRONYMS and ABBREVIATIONS

21J: M.G.L. c. 21J,

CMR: Code of Massachusetts Regulations

E-15: Fuel that contains up to 15% ethanol

EPA: U.S. Environmental Protection Agency

ERP: Environmental Results Program

IOMA: Independent Oil Marketers' Association

IT: Information Technology

LSP: Licensed Site Professional

MCP: Massachusetts Contingency Plan, 310 CMR 40.0000

M.G.L.: Massachusetts General Law

NACE: NACE International, The Corrosion Society

NWGLDE: National Working Group on Leak Detection Evaluation

PE: Professional Engineer

PEI: Petroleum Equipment Institute

ppm: parts per million

psi: pounds per square inch

RCRA: Resource Conservation and Recovery Act

SOC: Significant Operational Compliance

SIR: Statistical Inventory Reconciliation

UL: Underwriters Laboratories, Inc.

UST: Underground Storage Tank

INTRODUCTION

In February 2014, the Massachusetts Department of Environmental Protection (MassDEP) proposed a new regulation, 310 CMR 80.00, Underground Storage Tank Systems (UST systems) and companion amendments of three existing regulations, to implement the requirements of Chapter 4 of the Acts of 2009, which introduced a new chapter of the Massachusetts General Laws: Operation and Removal of Underground Storage Tanks (M.G.L. c. 21O). Section 7 of Chapter 4 of the Acts of 2009 transferred responsibility for oversight of the UST leak prevention program from the Massachusetts Department of Fire Services (DFS) to MassDEP (the "transfer legislation").

The law authorized MassDEP to administer the UST leak prevention program under the regulations adopted by DFS (regulations governing gasoline/motor fuel inventory at 527 CMR 5.06 and tank/container regulations at 527 CMR 9.00), until MassDEP established its own regulations. With the promulgation of these final regulations, MassDEP has established its own regulations governing UST system installation, operation and maintenance. Section 5 of the transfer legislation also repealed M.G.L. c. 148, §§ 38A-38I, which gave DFS authority to implement an UST Program, but the statute maintained DFS's authority to permit UST closures. Therefore, concurrently with the promulgation of the MassDEP regulations, DFS is rescinding the portions of its regulations that have been implemented by MassDEP since the enactment of this law.

DFS has regulated the installation, operation, maintenance and closure of UST systems since 1975, and has incorporated requirements adopted by the U.S. Environmental Protection Agency as the federal program has been developed since 1984. In 1993, EPA delegated authority to implement the federal UST program in Massachusetts to the Commonwealth, which split authority between DFS and MassDEP. DFS had responsibility for the part of the program that was designed to prevent USTs from leaking, which included oversight of installation, operation and maintenance of UST systems. MassDEP was responsible for ensuring that releases from UST systems into the environment were reported, assessed, and cleaned up properly. EPA has provided funding through grants to both agencies to support this work.

M.G.L. c. 21O established that underground tanks holding "regulated substances" would be covered by the UST Program. The law defines "regulated substance" very broadly to include any substance listed in the U.S. Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and petroleum. The law also defines "Underground Storage Tank" as a tank, including piping, which is 10% or more below the surface of the ground. M.G.L. c. 21O also lists types of containers that are not regulated as "underground storage tanks."[1]

[1] These include septic tanks, natural gas pipelines, surface water impoundments, flow-through product tanks, storage tanks located in basements, cellars or mines if the tank is situated on or above a floor and all of its sides are accessible and visible.

Since the transfer legislation was enacted, MassDEP has been regulating UST systems under DFS's regulations (527 CMR 9.00 and 527 CMR 5.06), while continuing to implement long-standing requirements adopted under the authority of the Massachusetts Superfund Law (M.G.L. c. 21E) to ensure that releases from UST systems into the environment were reported, assessed, and properly cleaned up.

With the February 2014 proposal for a new chapter of the Code of Massachusetts Regulations for UST Systems, MassDEP also proposed to amend three other regulations so they would be consistent with 310 CMR 80.00:

- 310 CMR 30.000, Massachusetts Hazardous Waste Regulation
- 310 CMR 70.00, Environmental Results Program, and
- 310 CMR 80.01 and 80.02, which MassDEP adopted in February 2102 to implement the operator training portion of the federal UST program. These regulations were promulgated on an expedited basis, so that UST system Owners could comply with the federal requirement for the use of operators with specific types of training to operate and maintain their UST systems by August 8, 2012. The substantive requirements of these sections have been incorporated into a new section, 310 CMR 80.36. The current applicability and definition section for the operator training program at 310 CMR 80.01 have been folded into the proposed applicability and definition sections at 310 CMR 80.03 and 310 CMR 80.04.

MassDEP published this package of regulations for public comment on February 10, 2014, and closed the comment period on March 31, 2014. Six public hearings were held in locations across the Commonwealth during the public comment period. During the public comment period, MassDEP received many helpful and thoughtful comments. Stakeholders expressed broad support for the intent of these regulations, but also raised a number of specific concerns and made many suggestions for improving the regulations. MassDEP has carefully considered these comments and addressed them by revising the regulations in a number of ways. Also, since June 2014, MassDEP has worked with program stakeholders and an information technology consultant to design a data management system that will allow streamlined electronic filing of required notifications and reports, and will allow MassDEP to track UST system compliance with the regulations. The discussions about the data management system design have also identified a few minor edits that have been made in the final regulation, to ensure that the regulation and data management system are consistent.

Major changes that have been made in the final rule are summarized below:

1. Revised several definitions for clarity and to reflect common industry usage. Some have been re-titled:
    - "Component" has become "UST System Component", "Emergency Shut-off Valve" has become "Shear, Crash, or Impact Valve", "Product Deliverer" has become "Regulated Substance Deliverer",
    - The definitions of "Repair" and "Replacement" have been clarified to ensure that they apply to different and distinguishable actions.

- Deleted the definition of “Threat of Release” and also deleted all references to this term in the regulation, so that the UST Program will rely on the definition and requirements of the Massachusetts Contingency Plan for situations in which a regulated substance may be reportable under that regulation. Definitions were also added for “Monitoring Device” and “Spill Bucket”

2. Deleted requirements for Airport Hydrant Fueling Systems from the Applicability section [310 CMR 80.04(3) and 310 CMR 80.19(3)]; these fueling systems will not be regulated by the MassDEP Underground Storage Tank Program at this time.
3. Required documents demonstrating that an UST system contains only a *de minimis* concentration of a regulated substance (and therefore exempt the UST system from the regulation) to be kept by the Owner or Operator as long as the exemption is claimed, rather than for the period of four years as proposed in the draft regulation [310 CMR 80.04(5)(c), 80.36(7)].
4. Required UST systems that are used solely for emergency spill and overflow containment to be emptied within 72 hours of the introduction of a regulated substance, rather than the 48 hours allowed under the proposed regulation [310 CMR 80.04(12)].
5. Changed the requirement to state that MassDEP must provide no less than 48 hours notice of an announced inspection [310 CMR 80.13(2)(3)]. For MassDEP inspections of UST systems, Owners and Operators do not have to provide access to any UST system or UST component that would only be visible for inspection if it must be excavated [310 CMR 80.13(2)(h)].
6. Changed the requirement to allow Owners to notify MassDEP within 30 days of the initial introduction of regulated substance into an UST system, rather than within 30 days of installation of the UST system as was proposed [310 CMR 80.16(8)].
7. Clarified requirements for siphon lines [310 CMR 80.16(14), 310 CMR 80.18, 310 CMR 80.19(3)].
8. Clarified leak detection requirements for tanks used for emergency generator engines and emergency generator engine-driven pumps installed before the effective date of the regulations [310 CMR 80.19(2)(e)].
9. Clarified the leak detection requirements for regulated substance piping serving UST systems that were installed before January 1, 1989 [310 CMR 80.19(3)(c)].
10. Clarified that dispenser sumps are required to have a sensor that continuously monitors the sump for the presence of liquid if both the product dispenser and the piping used to connect the product dispenser to the tank are replaced [310 CMR 80.20(1)(a)].
11. Changed the requirement to allow Operators who are authorized by the UST system Owner to update registrations [310 CMR 80.23(1)(b) and to submit documents [310 CMR 80.23(2)].
12. Changed the requirement for Owners/Operators to notify MassDEP of a change in product so that notification is now required before the change, rather than seven days in advance of the change as proposed [310 CMR 80.23(2)(a) and 80.41(3)(b)].
13. Limited the requirement for UST system or UST facility records to be transferred to a new Owner to only as-built plans of the UST system and cathodic protection if those documents were required to be kept by the Owner selling the property [310 CMR 80.23(4)]. Also, the final rule requires the seller of an UST system to notify the purchaser of registration requirements [310 CMR 80.23(5)].
14. Clarified requirements for emergency response signage in UST facilities [310 CMR 80.25(1)].

15. Clarified steps that Owners and Operators must undertake when a release or leakage is indicated by an alarm or observation at UST systems with continuous interstitial monitoring [310 CMR 80.26(3)(c)].
16. For UST systems using Statistical Inventory Reconciliation (SIR) as their primary means of detecting leakage, clarified that the SIR vendor must be "qualified" as opposed to "trained" as proposed in the draft regulation [310 CRM 80.26(6)(a)], and that an in-tank monitor must be used to conduct (SIR) [310 CMR 80.26(6)(f)]. This is also a requirement in DFS' regulations.
17. Clarified the requirements for follow-up actions when leak detection equipment or methods indicate that a release or leakage may have occurred [310 CMR 80.26(7)(c), 80.26(8)(c) and 80.31].
18. Changed the requirement in the regulation to allow equipment used for tank and piping tightness testing to be capable of consistently detecting leaks at a rate of 0.1 gallons/hour until January 1, 2018, and require this equipment to be capable of detecting leaks at a rate of 0.05 gallons/hour on and after January 1, 2018 [310 CMR 80.32(1) and (2)].
19. Changed the regulation covering tanks that have had a release of regulated substance to state that these tanks must be emptied within 24 hours of obtaining knowledge of the release, rather than being taken Temporarily Out-of-Service as originally proposed in the draft regulation [310 CMR 80.33(1) and 80.38]. Changed the regulation covering tanks that have had leakage of a regulated substance to state that these tanks must be emptied within 72 hours of obtaining knowledge of the leakage [310 CMR 80.33(2) and 80.39], rather than being taken Temporarily Out-of-Service as proposed in the draft regulations.
20. Changed the regulation on piping (or portion of piping) that is the source of a release or leakage of regulated substance so that this piping (or portion of the piping) must be immediately isolated, and emptied, and must remain empty until it is repaired or replaced, or until the UST system is permanently closed or removed [310 CMR 80.33(3)]. If a repair or replacement cannot be done within 30 days of identifying the need for it, MassDEP must be notified in writing of the delay and informed of the schedule for completing the repair/replacement. It will not be necessary to obtain MassDEP's approval of the extended schedule [310 CMR 80.33(4)]
21. Added a provision that allows MassDEP to authorize delivery of regulated substance to an UST system that has received a delivery prohibition in order for compliance testing to be conducted, [310 CMR 80.48].
22. Changed the regulations to require submittal of a Return to Compliance Completion Report within 30 days of the submittal of a third-party inspection report that identified issues, and deleting the phrase "or the UST facility compliance date, whichever is earlier". [310 CMR 80.49(7)(c)3.b.]
23. Deleted requirements for submittal of Financial Responsibility documents to MassDEP when relying on insurance, surety bonds, letters of credit, and trusts [310 CMR 80.58(1)]. Maintained requirements for submittal of documents related to financial tests of self-insurance and corporate guarantees and tied submittal of these documents to updates of registration [310 CMR 80.58(1) and (2)]. Allows an Operator to submit Financial Responsibility documents [310 CMR 80.58(1) - (7)] on behalf of an Owner.

The remainder of this document summarizes the public comments received during the public comment period, presents MassDEP's responses, and identifies a few other clarifications made by MassDEP. The comments are organized by topic and section of the regulations.

A. RESPONSES TO COMMENTS on 310 CMR 80.00

General Comments

Comment 1: Thanks to MassDEP for working with the regulated community over the last five years to develop a new set of Underground Storage Tank regulations. Although we have different ideas and approaches, both MassDEP and the regulated community want the same thing, which is to protect the environment. An early version of these regulations would have penalized station owners for investing in the latest technology by requiring multiple inspections and testing, where facilities that had older technology did not have the same level of inspections and testing. The current regulations do just the opposite, and I commend MassDEP for changing many of these requirements, which will go farther to protect the environment and will also provide incentives for tank owners to upgrade their UST systems. [Bruce Garrett]

Response 1: *Thank you for your comment.*

Comment 2: MassDEP is commended for the overall organization and clarity of 310 CMR 80.00. The commenter supports MassDEP's vision for implementing the UST program by better defining the roles and responsibilities of Owners and Operators, third-party inspectors, and MassDEP in ensuring that USTs are properly installed, operated, and maintained to prevent releases of regulated substances to the environment. The commenter also offered specific suggestions for improvements. [MassDOT]

Response 2: *Thank you for your comment.*

Comment 3: Several issues should be addressed by the Department prior to their promulgation. There are several sections of these regulations where the Department's intentions about how these regulations were designed to operate are unclear. These sections involve the proposed requirements for conducting repairs, installing replacement equipment and responding to releases, leakage, and threats of release. It is important to explain how these sections are intended to operate. This effort will be of great value, not only in the interim, but also most importantly toward forging a long-term understanding and shared vision for this regulatory program between the Department and all program stakeholders. Without such a discussion, the "public hearing" draft is not ready for promulgation. Conflicts among the various proposed regulatory sections leave us without an understanding of exactly what the Department is proposing and how the unclear sections are to be implemented for operational purposes. Successful

implementation of all sections of the UST regulations will achieve the intended compliance for USTs, which makes for good public policy. [Independent Oil Marketers' Association, "IOMA"]

Response 3: *MassDEP recognizes that several sections of the proposed regulation could have been interpreted to conflict with other sections, and has made revisions to address these conflicts in the final rule (see Specific Comments below).*

Comment 4: The organization and format of the regulations needs to be improved in order to improve readability and comprehension, minimize instances of overly prescriptive regulations (including recordkeeping requirements), and promote consistency with other UST related programs. To improve the readability and comprehension of these regulations, they should be inventoried and revised appropriately to consistently include both section and subsection headings. This would help to prevent readers from getting lost among the pages when researching citation cross references, and would help readers know with confidence that the point of compliance they are trying to understand is located entirely within a designated section of the regulations, and that they are not missing something located at the end of, or among a long list of requirements. For example, section 80.26 "Requirements for Leak Detection", goes on for six pages without any subsections or headings.

A consistent and predictable format should be used throughout the entire regulations for every section and subsection. Many sections and subsections appear to follow a "shopping list" approach with no easily discernible rationale or consistent format. Some requirements appear out of context in these sections and may be better located in another section to improve clarity and, thereby decrease distraction and confusion a reader may experience. Suggest a common format for each major section of the regulation: Purpose; Applicability; Exemptions; General Requirements; and Specific Requirements. All sub sections under Specific Requirements should then be further organized under headings that correspond to tank type (SW/DW/steel, fiberglass), piping type, or component name and their respective point of compliance sub-section heading such as Inspection Content; Inspection Frequency; Testing Content; Testing Frequency; and Record Keeping requirements and so on, as additional subsections. [IOMA]

Response 4: *MassDEP has made a number of revisions in the final regulation that are designed to ensure that all of the sections work together for a consistent and clear regulatory program. In addition, MassDEP is planning to work with industry groups to provide outreach and training to the regulated community, to ensure that, to the extent possible, everyone involved with these requirements understands what they need to do. The specific format that was suggested would actually make the final regulation significantly longer if it were implemented through the entire regulation. However, MassDEP's clarifications in the final rule have been designed to structure the sections along the recommended lines where possible.*

Comment 5a: Unfortunately, the existing UST regulations (527 CMR 9.00) seem poised to be replaced with an even longer and more opaque set of regulations that introduce increasingly technical jargon and imprecise language that render the regulations unclear. [MA Maritime Trade Association]

Comment 5b: Please work to keep the language simple. Often as regulations are created, businesses find them impossible to understand without legal translation. If the business owner can fully understand the rules and requirements, compliance can be more easily achieved while still achieving the goal of keeping the environment safe. [Cape Cod Marine Trades Association]

Response 5a and 5b: *In both the proposed and final regulations, MassDEP has attempted to use the terms that are familiar to the UST industry, and has established regulatory definitions for these terms to ensure consistency. MassDEP recognizes that UST system owners and operators will need summaries of the final regulatory requirements to help them understand what they will need to do to comply. To this end, the Department is working with industry groups to develop outreach materials and training, and plans to hold information sessions and to provide assistance in other ways to the regulated community when the final regulations are promulgated.*

Comment 6: In light of the extremely poor record of compliance by Underground Storage Tank (UST) owners and operators in Massachusetts compared to owners and operators nationally the proposed UST regulations are inadequate to properly address the level of risk USTs pose to public health and the environment. MassDEP's February, 2014 "Background Document for Public Comment" states that, in 2012, Massachusetts Owners and Operators were in "Significant Operational Compliance" with all of EPA's *minimum* UST requirements only 32% of the time, less than half the national average of 71%. Our state's abysmal compliance record should induce MassDEP to do much more than the minimum UST requirements EPA imposes on states.

For example, MassDEP has not made a commitment as to the minimal level of effort (in staff "Full Time Equivalents") that the agency will expend annually conducting UST inspections and performing other UST responsibilities. As the Department will not for at least a few years have the technical capability to conduct a meaningful Compliance Certification program (see related comments below on Section 80.34), it should dedicate the staff it plans to use for certifications during this time period to instead conduct more inspections. By the time it has an adequate Information technology system to track and follow up on certifications, the Department should have a pretty good idea of whether the level of compliance of owners and operators has improved sufficiently to warrant fewer inspections in the future. [Neponset River Watershed Assoc.]

Response 6: *In developing the proposed regulation, MassDEP has been cognizant of Massachusetts UST Owners' and Operators' compliance status with EPA's Significant Operational Compliance indicators, and has included a number of regulatory requirements that are new, such as testing of sumps and spill buckets, testing and inspections of overfill protection equipment, a new compliance certification that supplements third-party inspections, and enhanced requirements for third-party inspectors.*

The ERP program has provided MassDEP with data showing that, an approach that couples technical assistance to the regulated community with certifications about compliance status by facility owners or operators and MassDEP checks on compliance has been an extremely effective tool to bring industries with many small businesses into compliance and have them stay in compliance. This type of program also allows MassDEP to target its resources for inspections to problem areas and to conduct periodic random inspections, using Agency resources efficiently.

Comment 7: The proposed regulations generally suffer from the following four shortfalls. They:

1. allow owners and operators to unreasonably delay appropriate remedial action even in conditions where there is significant risk of leakage or spillage that could cause serious contamination of groundwater *(see comments below on Sections 80.04, 80.26, 80.33, 80.35, 80.39, 80.48, and 80.50);*

2. give owners and operators the ability to delay reporting important information to MassDEP and, in some cases, to give them an opportunity to falsify reports where that opportunity need not exist *(see comments below on Sections 80.10, 80.23, 80.42 and 80.49);*

3. establish inadequate conflict of interest prohibitions for Third-Party Inspectors (*see comments below on Section 80.49(6));* and

4. require too few inspections and certifications *(see comments below on Sections 80.34, 80.35 and 80.49).*

   [Neponset River Watershed Assoc.]

Response 7: *MassDEP's goal for the UST Program (as for all of the other regulatory programs that it operates) is for the entities subject to regulation to come into compliance with the rules and stay in compliance over the long term. In response to the specific points made in this comment, please note that:*

1. *In virtually every MassDEP program, facility owners and operators are provided with opportunities to cure compliance problems before they are required to report to MassDEP. While the UST Regulation does not prevent Owners and Operators from fixing leakage when it is identified, the Regulation also recognizes that not every alarm (or other indication of leakage) necessarily means that a release has in fact occurred. Therefore, the regulation provides Owners and Operators certain amounts of time to investigate – MassDEP does not want to receive reports of things that are not actually or likely to be problems.*
2. *Since MassDEP's goal is to bring non-compliant UST systems into compliance, we believe that it is important for UST system Owners and Operators to have time to review reports prepared by Third Party Inspectors and to "own" the information that will be reported to MassDEP. While unscrupulous people can falsify information in any of MassDEP's programs, we believe that we*

have sufficient checks and balances in the UST Program to ensure that anomalies will be identified in a timely way and rectified promptly.

3. *The conflict of interest provisions for Third Party Inspectors have been substantially enhanced over older requirements. The provision in the final regulations establish some limits for Third Party Inspectors to ensure that they are not reviewing their own work, and that they will be substantially insulated from pressure to provide good results that are not warranted by their inspections. At the same time, the limits have been crafted to ensure that they will not prevent Third Party Inspectors from conducting business. MassDEP will be assessing how well the conflict of interest provisions in the final regulation work going forward.*
4. *The numbers of certifications and inspections required of Owners and Operators in this regulation have been developed to provide these parties with sufficient information about potential compliance issues so they can take earlier action and prevent small issues from becoming large ones, and have also been balanced against all the other regulatory requirements that these facilities are subject to (including other MassDEP and non-MassDEP regulatory programs). MassDEP will continue to monitor the overall compliance status of this industry (as we are required to by EPA).*

Comment 8: The Department needs to incorporate the Petroleum Equipment Institute (PEI)'s "RP 1200-12, Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities" into the revised regulations. This will provide a standard for conducting much of the work being proposed in the State as well as potential changes in the federal UST regulations. This standard was developed to provide practical guidance for owners, service providers and regulatory agencies for performing this work and interpreting test and inspection results. It will also eliminate the need for excess regulatory language explaining how to perform tests and criteria for pass/fail in the body of the regulations as is currently written.

For example, 310 CMR 80.20(4) should be changed to read "Turbine, intermediate and dispenser sumps shall pass a tightness test at installation to ensure the sump is liquid tight in accordance with PEI "RP1200-12 "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities." In addition, all other sections of the proposed regulations that specify testing and inspection of equipment contained in the RP 1200 document should be changed to reference the document for how the work should be completed (including 80.21(1)(c), 80.21(2), 80.26(9), 80.27(8), 80.28(2)(g), 80.28(3)(a)). 80.27(7)(a) and 80.27(7)(b) should be deleted. [Crompco, Ed Kubinsky]

Response 8: *This standard was not available when MassDEP drafted the pertinent sections of the UST Regulation. However, MassDEP will review it, and will consider referring the industry to it as guidance for compliance with the UST Program regulatory requirements. New and updated and industry standards may be incorporated into the regulations in the future.*

Comment 9: The proposed regulations rely on a number of non-governmental standards. Since these need to be purchased, there will be less access to them. Also, as they become updated, perhaps some of these will go out of print and no longer be available. Consider replacing them to the extent possible with procedures written directly into the regulations. [Marcia Berger]

Response 9: *Unfortunately MassDEP cannot incorporate all the standards that are referenced in the listed standards because standards developed by private and non-profit organizations are copyrighted. However, by identifying relevant standards in the UST Regulation, MassDEP is signaling to UST Owners, Operators, and professionals in the field that they should obtain these standards as a routine business practice, and should rely on them for important compliance decisions.*

Specific Comments

Please note: *The Comments and Responses in this section are organized according to the order of the sections of the proposed Underground Storage Tank regulation and associated regulations that were offered for public comment in January 2014.*

General Provisions

Section 310 80.03, Definitions

Comment 10, 80.03 Automatic Line Leak Detector: This definition should be revised or clarified, as it limits the leak detection requirement for pressurized piping to allow only automatic line leak detection with an automatic flow restrictor or automatic flow shutoff. The commenter operates two UST systems with pressurized piping which have the critical function of highway tunnel ventilation, and as such, cannot be operated with flow restriction or shutoff due to the need to provide emergency and on-going ventilation for public safety and health reasons. The regulation should expressly provide the flexibility contained in U.S. Environmental Protection Agency (EPA) UST pressurized piping regulations that require each pressurized piping run to have one leak detection method from each set (A *and* B):

A. An Automatic Line Leak Detector:	B. And One Other Method:
• Automatic flow restrictor; or	• Monthly interstitial monitoring; or
• Automatic flow shutoff; or	• Monthly vapor monitoring; or
• Continuous alarm system.	• Monthly groundwater monitoring; or
	• Monthly statistical inventory

	reconciliation; or
	• Annual tightness test.

This revision will expressly allow the commenter to operate its continuous alarm system at these tanks, which will constantly monitor line conditions and immediately trigger an audible or visual alarm if a leak is suspected. This revision will also clarify that it will not be required to operate an automatic flow restrictor or automatic flow shutoff at these tanks. The commenter also intends to conduct an annual tightness test as provided for in the EPA UST regulation in B. above. [MassDOT]

***Response 10**: In the draft regulation, MassDEP proposed to not allow leak detection for pressurized piping systems that rely on continuous alarm systems because these alarms can only serve their purpose if someone is available to hear or see them, and MassDEP recognizes that the vast majority of UST systems in the Commonwealth are relatively small systems that are not staffed 24-hours a day/365 days a year. However, MassDEP appreciates this comment, and has revised the final regulation to allow a continuous alarm system for UST systems that are staffed 24 hours a day, 7 days a week.*

Comment 11, Certified tightness tester: The title of this definition should specify that these people test UST systems, and should read "Certified UST system tightness tester". [IOMA]

***Response 11:** MassDEP changed "Certified tightness tester" to "Certified UST system tightness tester" in the final regulation.*

Comment 12, Change-in-product: This definition should exempt changing from one type of motor fuel to another (e.g., changing from diesel fuel to gasoline or from gasoline to diesel fuel). Switching from one type of fuel to another is as routine as switching from one grade of fuel to another. [IOMA]

***Response 12:** MassDEP did not make this change. It is important that "change-in-product" includes switching gasoline to diesel and vice versa because these regulated substances have different flash points. When MassDEP and local fire departments respond to incidents or emergencies at UST facilities, having accurate information about the contents of the tanks is crucial.*

Comment 13, Change-in-product: When E-15 enters the Massachusetts market, will MassDEP consider this a "change-in-product" or not? [IOMA + LSP Association]

***Response 13:** MassDEP will not consider this a "change-in-product" if the change is from a type of gasoline, such as E10 to E15 because E15 is a type of gasoline. However, the Owner and Operator will still have to meet the compatibility requirements at 310 CMR 80.30.*

Comment 14, Component: This definition should be retitled "UST System Component". The definition should not specify that this term refers to "elements of an UST system". Also, the definition should exclude the UST and its associated piping as an "UST System Component," but should include dispenser and vent lines. It is important for subsequent sections of the regulation that address repairs and replacements (310 CMR 80.33, Requirements for Repairs and Replacements) and responses to leakage (310 CMR 80.39, Response to Leakage) to define terms that clearly distinguish among the tank, piping, and other UST System components, as separate requirements apply to each. [IOMA]

Response 14: *In the final regulation, MassDEP changed the term "Component" to "UST Component". It would be confusing to use the term "UST System Component" because "UST system" is defined as the tank and its piping. MassDEP took out terms "tank" and "piping" from the definition of "UST Component." MassDEP also clarified the requirements for UST systems and UST components throughout the final regulation (including sections governing responses to releases and leakage). MassDEP did not include the terms "dispenser" and "vent lines" as UST Components because this equipment is not regulated in the UST program.*

Comment 15, Dispenser Sump: This definition should include impermeable fluid-tight pans in addition to basins. Also, by requiring dispenser sumps to provide secondary containment, this definition establishes a standard for this equipment that cannot be met by today's sump containment equipment. The term "secondary containment" is not used to describe turbine sumps or spill buckets. [IOMA]

Response 15*: In the final regulation**, MassDEP did not add impermeable fluid-tight pans to the definition of "Dispenser Sump" because these pans are too shallow to adequately contain a substantial leak from a dispenser. The term "secondary containment" was removed from the final definition.*

Comment 16, Emergency shut-off valve: This definition is not consistent with common terms in use in the industry. It appears to define a "shear", "crash", or "impact" valve that is located at the base of the dispenser and when activated, shuts off the fuel pump for the dispenser to prevent the release of fuel in the event of a collision or fire. However, the industry uses the term "emergency shut-off" to refer to a switch, not a valve. When this switch is activated, it prevents all electro-mechanical operations (e.g., pumping) of an UST system in the event of an emergency. These switches are typically installed at marina fueling locations, where a fusible link is not present. These terms should be revised to conform to industry practice by re-titling the definition as "Crash, shear, or impact valve", and should clarify that these devices are "designed to close automatically in the event of a severe impact *or exposure to* fire" (added language in italics). [IOMA]

Response 16: *MassDEP changed "emergency shut-off valve" to "shear, crash or impact valve" in the final regulation and amended the definition to read "severe impact or exposure to fire".*

Comment 17, Leakage: How does this definition comport with the definition of "Threat of Release" that is used in the Massachusetts Contingency Plan (310 CMR 40.0000)? Under the proposed Leakage definition, owners and operators of UST systems will be required to notify the 21E program for leakage of regulated substances into designed and engineered UST containment systems. This is especially problematic because the definition of "threat of release" for the UST program excludes the bright lines for the 72-hour notification requirements in the MCP for tightness testing. In several instances, UST owners and operators have notified the 21E program and engage LSP's to prepare closure documents, but have later retracted the notification for leakage that only entered an UST containment system. MassDEP's BWP and BWSC programs need to clarify each of their programs respective jurisdictions over UST systems where they intersect, especially as it relates to responding to leakage, threats of release, and release notification responsibilities under the MCP. Without these clarifications, UST owners and operators will need to file unnecessary 21E notifications for "leaks" to UST containment systems, and will have to engage LSPs at significant costs for questionable environmental benefit. Leaks to containment systems that do not reach the environment are best handled under the UST program. Otherwise, UST owners and operators will have to serve two masters at the same time, for the same concern, which would be wasteful of everyone's scarce resources. [IOMA]

Response 17: *MassDEP has removed the term "threat of release" from the final regulation and defers to the MCP and the Bureau of Waste Site Cleanup to determine a "threat of release" , in regard to UST systems and UST components. The Bureau of Waste Prevention will work with the Bureau of Waste Site Cleanup to develop guidance for the regulated community to help determine under what circumstances leakage rises to the level of a "threat of release" under the MCP.*

Comment 18, Leakage: This definition directly contradicts 310 CMR 40.0314 (2), which states that Threats of Release Which Require Notification Within 72 Hours include results of a tank test "...which indicates there is a substantial likelihood of a leak equal to or greater than 0.05 gallons per hour…(2) in the inner wall of a double walled Underground Storage Tank…" Consistency between 310 CMR 80 and 310 CMR 40 should be sought to minimize the confusion of tank owners and operators, and to help mitigate the potential liabilities to Licensed Site Professionals which may result due to inconsistency in these regulations. [LSP Association]

Response 18: *MassDEP developed the term "leakage" in the UST regulations in order to account for "releases" that were not to the environment, but to equipment within the UST system or UST components. Leakage of regulated product into interstitial spaces need to be identified by facilities, so Owners and Operators can make repairs to prevent a release of regulated product into the environment.*

MassDEP has removed the term "threat of release" from the final regulation and defers to the MCP and the Bureau of Waste Site Cleanup to determine a "threat of release", in regard to UST systems and UST components. The Bureau of Waste Prevention will work with the Bureau of Waste Site Cleanup to develop guidance for the regulated community to help determine under what circumstances leakage rises to the level of "threat of release" under the MCP.

Comment 19, Listed: Underwriters Laboratories, Inc. (UL) should be added to the list of recognized organizations in this definition. [IOMA]

Response 19: *MassDEP added Underwriters Laboratories, Inc. to this definition in the final regulation.*

Comment 20, Operator, Owner: Paragraph (2) of these definitions should be deleted. These definitions are expanded well beyond their current federal definitions, and are inconsistent with and duplicative of the definitions of these terms in M.G.L. c. 21E and the MCP. M.G.L. c. 21O, Section 5, paragraph 4 requires MassDEP to be consistent with and not create requirements that duplicate those contained in M.G.L. c. 21E and the MCP. MassDEP appears to be attempting to regulate abandoned or orphaned USTs through these provisions in the definitions of Operator and Owner. The proposed definitions significantly expand the universe of parties who are required to comply with 310 CMR 80.00, particularly with respect to closure testing requirements, and to requirements of the 21E cleanup program.

The provisions in paragraph (2) of these definitions will in some instances cause parties who would not otherwise be liable for oil releases under M.G.L. c. 21E (because they are not a current owner or operator of the property), to become subject to c. 21E and the MCP under the requirements of 310 CMR 80.00. In general, M.G.L. c.21E limits liability for releases of oil to the current owner(s) of the property. Under these expanded definitions the person who last owned the tank when its use was discontinued will now be included as an Operator and Owner in addition to the current landowner, and both current and past parties will be subject to 310 CMR 80.00 in its entirety.

Including a current owner of land on which an abandoned or orphaned UST is located as an Operator under 310 CMR 80.00 is highly questionable, especially when the obligations under these regulations are not curtailed in any way, and the current landowner may not have owned the property when the tanks were operating. Including the person who owned the tank when its use was discontinued as an Owner under 310 CMR 80.00 (even though that person may no longer own or never owned the property) is inconsistent with the longstanding liability scheme in M.G.L. c. 21E that generally exempts past owners of a property where oil has been released from responsibility for assessment and cleanup. MassDEP should use the current federal definitions and not attempt to change how the marketplace addresses orphaned tanks or previously undiscovered and/or abandoned tanks. [IOMA]

Response 20: *MassDEP did not make this change. The language in the definitions of "Owner" and "Operator" are taken from the definition of "Owner" and "Operator" in M.G.L. c. 21O, sec. 2. MassDEP strives to develop regulations that implement and are consistent with M.G.L. c. 21O.*

Comment 21, Product Deliverer: The term "Product" should be defined in addition to "Product Deliverer". [IOMA]

Response 21: *MassDEP changed the term "Product Deliverer" to "Regulated Substance Deliverer" because the regulations use this term to capture a person who delivers regulated substance. "Regulated Substance" is defined as (1) Any substance defined in section 101(14) of CERCLA. Regulated substance also includes waste oil, but does not include any other substance regulated as a hazardous waste under M.G.L. c. 21C; and (2) Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 p.s.i. absolute).*

Comment 22, Product Deliverer: The definition should be expanded to include descriptions of non-petroleum product deliverers or carriers. [IOMA]

Response 22: *MassDEP did not make this change because the definition as drafted includes non-petroleum regulated substances. The first sentence reads "means any person who delivers or deposits regulated substance into an UST system." In addition to petroleum, the term "regulated substance" includes "Any substance defined in section 101(14) of CERCLA. Regulated substance also includes waste oil, but does not include any other substance regulated as a hazardous waste under M.G.L. c. 21C".*

Comment 23, Regulated Substance Piping: This definition should be edited to clarify that it refers to piping that conveys liquid regulated substances, and also that it excludes UST system vent lines. [IOMA]

Response 23: *MassDEP did not make this change. MassDEP has jurisdiction to regulate all UST systems that contain regulated substance and this is not limited to liquid. Regulated substance may be in vapor form.*

Comment 24, Release, Threat of Release: The definitions and use of the terms "release" and "threat of release" as they are defined and used in 310 CMR 80.00, need to be clarified so that they mesh with the definitions and use of the same terms in M.G.L. c. 21E and the MCP. The proposed definitions of these terms in 310 CMR 80.00 are slightly different than the definitions employed in M.G.L. c. 21E and the MCP. It would be helpful if the Definitions section of 310 CMR 80.00 includes a statement indicating that the terms "release" and "threat of release" shall have meaning ascribed to them under c. 21O when used in 310 CMR 80.00, unless the use of these same terms as they may appear in 310 CMR 80.00 explicitly states otherwise that it shall be ascribed the meaning contained in c. 21E and the MCP. This is an important cornerstone for clarifying the programmatic jurisdictions between these two regulatory programs. [IOMA]

Response 24: *MassDEP has removed the term "threat of release" from the final regulation and defers to the MCP and the Bureau of Waste Site Cleanup to determine a "threat of release", in regard to UST systems and UST components. The Bureau of Waste Prevention will work with the Bureau of Waste Site Cleanup to develop guidance for the regulated community to help determine under what circumstances leakage rises to the level of "threat of release" under the MCP.*

Comment 25, Release: This definition is needlessly different from that in 310 CMR 40.0006 and 21E. While it is unnecessary to include the exemptions found in those places, it would seem reasonable to otherwise duplicate the language to avoid confusion or ambiguity. This change would also help provide a clearer distinction between "Release" and the proposed definition of "Leakage". Additionally, the definition as written would seem to define a vapor release into the environment as neither a "Leakage" nor a "Release". [LSP Association]

Response 25: *MassDEP has removed the term "threat of release" from the final regulation and defers to the MCP and the Bureau of Waste Site Cleanup to determine a "threat of release", in regards to UST systems and UST components. The Bureau of Waste Prevention will work with the Bureau of Waste Site Cleanup to develop guidance for the regulated community to help determine under what circumstances leakage rises to the level of "threat of release" under the MCP.*

MassDEP did not strike the definition of "release" from the final regulation. The term "release" in 310 CMR 80.00 is a statutory definition from M.G.L. c. 21O, and therefore, only applies to UST systems, which accounts for the slight differences from the MCP definition.

MassDEP uses the definition of "release" in 310 CMR 80.00 as it appears in M.G.L. c. 21O. MassDEP has references to 310 CMR 40.0000 in 310 CMR 80.00 to remind Owners and Operators that, unlike the federal regulations, MassDEP's reporting requirements are in a different set of regulations.

Comment 26, Repair: The definition of "Repair" should be clarified to specify that the term only applies to tanks and piping that comprise an "UST system." This term has great importance given the requirements contained in 310 CMR 80.33, which identifies the actions or modifications that a tank owner or operator must implement that are not "routine maintenance." The proposed definition should be more specific about the elements of the UST system for which Repairs may be required, and should clearly specify that modifications needed to address a release, threat of release, or leakage are considered to be "Repairs"(and are therefore covered by the requirements of 310 CMR 80.33). It is not clear whether this definition includes "Replacement" of UST system components.

This definition could be clarified by adopting EPA's definition: "*Repair* means to restore a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release of product from the UST system or has failed to function properly." This approach would simplify the process of conducting repairs under these regulations and will vastly simplify this regulatory concept. Otherwise this definition is unclear and unwieldy as it relates to understanding how repairs are required to be made in 80.33. [IOMA]

Response 26: *The term "repair" is a broad term that basically means fixing something that is broken on a tank, piping or UST component. The procedures for repair are detailed in 310 CMR 80.33. MassDEP amended the definition of "repair" in the final regulation to specify that repairs can be made to a UST system (tank or piping), or to an UST component.*

The term "repair" does not include the word "replacement". "Replacement" is defined separately.

The commenter suggests adopting EPA's definition of "repair." However, EPA's definition of repair in its UST regulations at 40 CFR 280.10 is not the definition stated in the comments. The definition in 40 CFR 280.10 is "repair means to restore a tank or UST system component that has caused a release of product from the UST system". This definition only includes "fixes" to an UST system or component after the system or component has released product/regulated substance. MassDEP has constructed its "repairs" section to include <u>all</u> "fixes" that are not routine maintenance, not only ones that occur after a release.

However, the comment offered a helpful suggestion and MassDEP added the language suggested which reads, "including, but not limited to, modifications to the UST system or a UST component that are in response to a release or leakage."

Comment 27, Replace or Replacement: The definition of Replace and Replacement contains a conflict resulting from the definition of "Component" (see comment on definition of component), otherwise this definition conflicts with the requirements contained at 80.33 and 80.39. [IOMA]

Response 27: *MassDEP made changes to the definitions of "replacement" and "component". See also the response to Comments 15.*

Comment 28, Tank: Please insert a comma after "impoundment" in the definition of term "UST system" in paragraph (3). [Stuart Gray, US EPA, Region 1]

Response 28: *MassDEP made this change.*

Comment 29, Threat of Release: While this definition is consistent with the language of M.G.L. Chapter 21E, it would be clearer in order to alleviate concerns of the regulated community, including Licensed Site Professionals (LSPs), if this definition was made consistent with 310 CMR 40.0006. [LSP Association]

Response 29: *As discussed in earlier responses, MassDEP removed the term "threat of release" from the final regulation.*

Comment 30: The term "monitoring device", which is used in section 310 CMR 80.09, Accurate Monitoring, should be defined in 310 CMR 80.03, to provide clarity to the regulated community and MassDEP inspectors. [IOMA]

Response 30: *MassDEP added a definition of "monitoring device" as follows: Monitoring Device means an instrument that checks and keeps data and issues alerts and alarms.*

The term "accurate" is dependent on the equipment and method that is employed. MassDEP believes the dictionary definition of "accurate" is sufficient.

Comment 31: The term "Responsible Official" should be defined in 310 CMR 80.03. [MassDOT]

Response 31: *MassDEP did not make this change because 310 CMR 80.00 does not use the term "responsible official."*

Comment 32: There are requirements throughout the regulation for UST systems to be equipped with a "spill bucket" (e.g., §80.21(1)). However, the term "spill bucket" is not defined in the proposed regulation. Please consider adding a definition of "spill bucket" within §80.03. Based on EPA's UST guidance and MassDEP's verbal guidance, it appears that "spill bucket" is intended to refer to a permanent in-ground containment structure which accompanies a ground-level, vertical fuel filling port (e.g., as typically used at a gas station.) However, please note that other types of industries may use USTs with fuel filling ports that are fully above ground and visibly exposed (for example, a horizontally oriented port several feet above ground within a designated "filling station" shed). Therefore, please consider specifying that any "spill bucket" requirements (including the maintenance & testing requirements of §80.28, etc.) only apply to USTs with fuel filling ports at ground level. [Daniel Fefer, Epsilon Associates]

Response 32: *MassDEP added a definition of "spill bucket" as follows: Spill Bucket means a containment device used to catch, accumulate and prevent the release of regulated substance to the environment*.

Section 310 CMR 80.04, Applicability

Comment 33, 80.04(2): The terms used in this section, specifically "jointly" and "severally", are not defined. This makes it unclear whether these terms are meant to be used as in CERCLA, as in MGL 21E, or according to some other definition. There is no reference to these terms for liability in MGL 21O. [LSPA]

Response 33: *The terms "jointly" and "severally" have established legal meanings. Instead of defining the terms in 310 CMR 80.03, MassDEP describes what the terms mean at 310 CMR 80.04(2), in the context of the UST regulations and the use of the phrase "Owner or Operator."*

Comment 34, 80.04(3): The list of upgrades in Table A, Schedule of Upgrades, does not include all important UST system components that would be exempted from one or more UST requirements. For example, Section 80.04(8) exempts consumptive use tanks of 1,100 gallons or less from virtually all the standard requirements of these regulations. A spill or leakage of 1,100 gallons of gasoline can be very serious. MassDEP should provide its rationale (in risk-based terms) for exempting consumptive use tanks of this size or it should change the size criteria to 100 gallons or less. In either case, leak detection of some sort should be mandatory within a reasonable time. Table A in section 310 CMR 80.04(3) should be revised to include these requirements. [Neponset River Watershed Association]

Response 34: *MassDEP exempts small (less than 1,100 gallon) consumptive use tanks from most of the requirements of 310 CMR 80.00 for several reasons. First, consumptive use tanks are exempt from the notification (registration) requirements at M.G.L. c. 21O, §3. Therefore, MassDEP has no information on the universe of small consumptive use tanks. MassDEP specifically asked for information on the universe of consumptive use tanks in the background document that accompanied the draft regulation, but we received no information. MassDEP places more regulatory requirements on large consumptive use tanks (1,100 gallons or more) because a release from a large consumptive use tank would cause greater harm to the environment, and MassDEP has a better idea of where these tanks are located (schools, hospitals, large apartment buildings), even though they are also exempt from registration.*

Comment 35, 80.04(1)(b) Emergency shut-off valve: This definition is not consistent with common terms in use in the industry. It appears to define a "shear," "crash," or "impact" valve that is located at the base of the dispenser and when activated, shuts off the fuel pump for the dispenser to prevent the release of fuel in the event of a collision or fire. However, the industry uses the term "emergency shut-off" to refer to a switch, not a valve. When this switch is activated, it prevents all electro-mechanical operations (e.g., pumping) of an UST system in the event of an emergency. These switches are typically installed at marina fueling locations, where a fusible link is not present. These terms should be revised to conform to industry practice. Specifically, the definition should be re-titled "Crash, shear, or impact valve", and should be revised to say that these devices are "designed to close automatically in the event of a severe impact *or exposure to* fire (added language in italics). [IOMA]

Response 35: *MassDEP changed the term "emergency shut-off valve" to "shear, crash or impact valve."*

Comment 36, 80.04(3), Schedule of UST System Upgrade Requirements (Table A): The timeline, by January 1, 2019, for upgrading UST systems using a submersible pump that do not have a turbine sump by installing turbine sumps should be extended to 10 years after 310 CMR 80.00 is promulgated. The cost of implementing this requirement is estimated to range from $75,000 to $100,000 per gas station. Since this cost will be significant, many owners and operators may consider removing and replacing their tank rather than just adding a turbine sump. The industry will need more time to develop capital outlay programs, and will need to access capital on either a facility-specific basis or a multi-facility basis.

Therefore, ten years after the regulation is promulgated is requested to complete turbine sump installations. [IOMA]

Response 36: *MassDEP did not make this change. Submersible pumps with no turbine sumps are of serious environmental concern. A leak in the pump would result in a release to the environment because there is no containment system to hold the leak. It would be difficult to determine if there was a release to the environment because the regulated product would be absorbed directly into the ground. Additionally, there are no sensors to alert the Owner or Operator that a leak has occurred because there is no sump available for installing sensors.*

The commenter estimated that this upgrade would cost $75,000 to $100,000 per gas station. MassDEP's estimates, based discussions with tank installers, that the cost is much lower than the comment states. An alternative estimate is $10,000 per sump, (may be 1-3 sumps per facility), but the installation cost could be less than that if more than one sump is being installed at a facility.

Comment 37, 80.04(3), Schedule of UST System Upgrade Requirements (Table A): The table lines referencing upgrading requirements for Airport Hydrant Fueling Systems references leak detection requirements at 310 CMR 80.19(3)(d) and (e), but no subparagraph is numbered 80.19(3)(e). In addition, the schedule for phasing in leak detection for Airport Hydrant Fueling Systems is found in 310 CMR 80.19(3)(c), rather than in 80.19(3)(d) as listed in Table A. [US EPA-Region 1, Stuart Gray]

Response 37: *This upgrade requirement has been deleted. (See Response #75)*

Comment 38, 80.04(8) and (11): 310 CMR 80.04(8) and 310 CMR 80.04(11) do not include a statement that the owner or operator is subject to closure requirements per 310 CMR 80.41-80.47. However, section (b) of both of these codes requires response to a release or threat of release per 310 CMR 80.38, which states that in the event of a release or threat of release, the Owner or Operator shall comply with 310 CMR 40.0000. My concern is that without conducting an assessment per 310 CMR 80.41-80.47, the owner or operator may not know whether or not a release or threat of release has occurred. However, in these two instances, they are required to report such a release or threat of release. Both sections should be revised to include a statement that the owner or operator is subject to closure requirements per 310 CMR 80.41-80.47. This requirement is already set by 310 CMR 80.04(9)(l) and 310 CMR 80.04(10)(j) for tanks with a capacity of over 1100 gallons. Specifically, this requirement would include 80.43(2)(b), which states that for the removal of an UST system, the owner or operator shall conduct an assessment in accordance with 310 CMR 80.43 (4) within 24 hours after the UST system is removed, but prior to backfill of the excavation area. Adding these requirements would ensure that an assessment was conducted upon removal of these USTs, and would thereby ensure that the tank owner/operator has the information needed to determine whether a response per 310 CMR 80.38 is necessary. [Exeter Environmental Associates, Inc., Steven Shope and LSPA]

Response 38: *MassDEP did not make this change. Even though consumptive use tanks of 1100 gallons or less and farm/residential tanks of 1100 gallons or less are not subject to the closure requirements of 310 CMR 80.00, they are not exempt from the MCP. In addition, the Department of Fire Services will continue permitting the removal of UST systems pursuant to M.G.L. c. 21O, §1.*

Comment 39a, 80.04(9) and (10): Under these sections, it is difficult to understand why consumptive use tanks with a capacity of more than 1,100 gallons should not be subject to all the requirements of 310 CMR 80.00. Why are such tanks, if installed on and *after* January 1, 1989, not required to comply with the very important Financial Responsibility requirements? And what is the rationale for excusing such tanks installed *before* January 1, 1989 from meeting the standard requirements for leak detection (of all things), corrosion protection "if applicable," and Financial Responsibility? The Department should delete any of these exceptions for which it cannot provide a clear rationale, or it should require compliance with these requirements within a reasonable time.

It is particularly important that outdated leak detection equipment be upgraded. UST system components without the modern leak detection should be required to retrofit within a reasonable time. This requirement should be reflected in the Table A Schedule of Upgrades in section 80.04(3). [Neponset River Watershed Assoc.]

Response 39a: *All consumptive use tanks are exempt from the notification (registration) requirements at M.G.L. c. 21O, §3. Therefore, MassDEP has no information on the universe of consumptive use tanks. MassDEP specifically asked for information on the universe of consumptive use tanks in the background document that accompanied the draft regulation, but we received no information. Because of lack of information on these types of tanks, MassDEP simply carried over the requirements from DFS's regulations for consumptive use tanks over 1,100 gallons. MassDEP will continue to try to obtain information on consumptive use tanks and based on the information received, if any, will consider further regulating these tanks in the future.*

Comment 39b , 80.04(12), UST systems used solely for emergency spill or overflow containment: The timeframe for emptying UST systems used for emergency spill or overflow containment should be extended from within 48 hours of the introduction of regulated substance to within 72 hours, to be more reasonable. Also, if these tanks are not emptied within the specified timeframe, this section implies that the entire UST regulation will apply, instead of a much smaller sub-set of requirements, which would be misguided. Instead, MassDEP should identify the specific subparts of the UST regulation that these types of USTs must comply. The required timeframe for emptying these UST systems would be better placed in the General Operating Requirements section of the regulation without limiting the UST systems in this category to only those that can be emptied in a particular time frame after an emergency spill or overflow event. [IOMA]

Response 39b: *In the final regulation, MassDEP changed the timeframe within which to empty the tank to 72 hours. MassDEP moved the requirement to empty the tank within 72 hours to 310 CMR 80.04(12)(d).*

Additional clarification: 80.04(5)(c) – An Owner or Operator who claims that his or her UST systems are exempt from this regulation because they only contain *de minimis* quantities of a regulated substance has to retain documentation of the basis for this claim for as long as the Owner and Operator claims the exemption, so the records are available to MassDEP inspectors and third-party inspectors if the exemption is claimed for longer than four years.

Section 310 CMR 80.10, Duty to Provide Information

Comment 40a, 80.10: The term "reasonable request" is a highly subjective standard. A standard minimum timeframe should be established to guide the implementation of these requests across the Commonwealth. A minimum response time of 10 business days would be reasonable for all such requests by MassDEP. [IOMA]

Comment 40b, 80.10: Aside from regular reporting requirements, Section 80.10 would require Owners and Operators to provide information requested by MassDEP if such requests are "*reasonable*." Since these regulations apply to Owners and Operators, it would appear that Owners and Operators have the right to determine what is reasonable and what is not. The commenter is aware of no other regulation that puts the burden on the Department to prove that its informational requests are reasonable. Short of a finding by a judge in an administrative or judicial proceeding, the regulations should presume that DEP requests are reasonable. [Neponset River Watershed Assoc.]

Response 40: *MassDEP did not make this change. Many of MassDEP's programs have similar language in their regulations, and they do not specify a minimum timeframe that regulated entities have to respond to requests from MassDEP, due to the wide range of information that is being sought for many different reasons. The language, as written, gives MassDEP the flexibility to tailor each request based on the information MassDEP is requesting.*

Comment 41, 80.10(2): The text "…or when providing any other information ordered or requested by the Department in writing pursuant…" seems to indicate that an email response, a telephone call, or a facsimile providing information from an owner, operator, LSP, tank tester, repair technician, etc. would require such a certification. This seems unduly onerous and may provide opportunity for unintended acquisition of liability by LSPs. As it is unlikely that this is the intent of the Department, and as LSPs working on behalf of their clients must adhere to 310 CMR 40.0000 and 309 CMR 1-9, the Massachusetts General Laws, etc. this seems unnecessary. [LSPA]

Response 41: *This language is common in many of MassDEP's regulations. It applies to formal, written requests from MassDEP. Routine email exchanges will not be required to contain this certification, nor will telephone calls.*

Section 310 CMR 80.12, Presumption of Irreparable Harm

Comment 42, 80.12: Although the proposed language was drawn directly from M.G.L. c. 21O, it is not reasonable to characterize all violations, including recordkeeping omissions, as causing irreparable harm to "public health, safety and welfare, and to the environment." The programmatic approach proposed in 310 MCR 80.00 relies heavily on prescriptive technical requirements and on overwhelming requirements for recordkeeping and documentation, especially for single station operators. Most records are required to be held for a minimum of four years, while some specify that they be held for the operational period of the UST system. MassDEP needs to articulate with transparency how it will apply this standard across all of the requirements contained in 310 CMR 80.00. [IOMA]

Response 42: *MassDEP did not make this change. This language is common in many of our enabling statutes and the language is applicable to the UST program through M.G.L. c. 21O.*

310 CMR 80.13, Department Access to UST Facilities and Records

Comment 43, 80.13(1)(a): While the text of this regulation may be intended to provide MassDEP with flexibility in the selection of contractors to obtain samples and/or testing results from UST systems and the surrounding environment, as written, the regulation fails to provide for any Chain of Custody procedure, liability coverage for MassDEP, the "person", the property owner or operator, or potentially an LSP involved with the situation. Similarly, MassDEP or its representatives (i.e. third party consultants, contractors, tank testing company personnel) should present sufficient evidence of ability, competency, insurance coverage, etc. This is critical in the event that a test is improperly performed, equipment or property is damaged, or perhaps even that a release is caused through error or malfeasance. [LSPA]

Response 43: *Chain-of-custody procedures and liability coverage for MassDEP are not issues that need to be addressed in the UST regulations. MassDEP follows standard chain-of-custody procedures, and liability issues are covered by M.G.L. c. 268A. Owners, operators and LSPs may obtain their own liability coverage.*

Comment 44a, 80.13: Inspections of our facilities seem to be ever-increasing through not only routine scheduled Third Party Tank inspections, but also seemingly through more frequent un-scheduled visits from DEP, the Fire Marshall, or whomever, as proposed in the new draft regulation. This becomes redundant and burdensome on small business owners struggling to conduct business. In many cases

when these inspections occur, the business doesn't have extra staff on-site to assist the regulatory folks as, especially in the Marine Business, we typically need all personnel to efficiently take care of normal operations. Any consideration to make these visits and inspections scheduled events would be much appreciated by our industry. [Cape Cod Marine Trades Association]

Comment 44b, 80.13(1)(a), Reasonable Access: The proposal that MassDEP can conduct unannounced inspections appears to exceed the statutory authority provided in M.G.L. c. 21O.. The plain meaning of "reasonable time" needs clarification. To establish a "reasonable time" means that a "meeting of the minds" has occurred among the parties, and therefore, in order to fulfill that requirement both parties must agree the time is reasonable. Unannounced inspections by their very nature short circuit that meeting of the minds and will force many owners and operators to choose between declining access to agency inspectors which is their constitutional right, and facing possible retribution for being perceived as an uncooperative, or allowing access, and interrupting their oversight of their business, even losing revenue. This is a Hobson's choice.

There are many reasonable explanations for declining access, chief among them are the time of day. Many stations are particularly busy during the morning and evening rush hour commutes, and during lunchtime. Also, due to the complexity of these rules, many owners and operators will likely hire third parties to help them comply, track records, and conduct the required inspections and repairs, and would want those parties to participate and support them in the state's inspection process.

The advance notice that MassDEP's regional staff has provided to stations for comprehensive inspections has differed in the number of days before inspections. In some Instances, enough time has been provided to arrange for a routine service visit in conjunction with the date of the DEP inspection, thereby avoiding being assessed premium contractor rates. More often, the advance notice consisted of a couple of days, and the owner/operator had to hire contractors at premium (emergency response) rates in order to respond on such short notice. This is unfair, inequitable and inconsistent. While inspections are necessary, the announced inspection timeframe needs to be standardized to ensure consistent implementation across the state.

Except for emergency situations, all inspections should be announced, but two different timeframes could be used. Instead of unannounced inspections with no notice, a 48-hour advance notice could be provided to owners and operators. This would still provide the Department with an accelerated inspection and compliance tool, while at the same time respecting the business concerns and constitutional rights of owners and operators.

For the more comprehensive inspection specified in the regulations as an "announced inspection," a ten business day notice should be provided to UST system Owner and Operators. This would allow Owners and Operators to have the necessary personnel on site without having to pay premiums for last-minute arrangements.

Advance notice should always be in writing and must specify what equipment/system will be evaluated.

In some situations, contractor personnel were brought to the facility in response to a notice that an UST inspection would be conducted, but the inspection focused on something not related to the UST system, and personnel with expertise in that aspect of the station were not available. [IOMA]

Comment 44c, 80.13(1)(a): For a full scale inspection DEP is requiring me to have someone who will open up the manholes and equipment for them to inspect. I will have to hire my tank maintenance contractor to come to my station and do this. DEP doesn't specify in the regulations how much advance notice they will provide. If I only get 2-3 days notice, I will have to pay premium rates. DEP needs to give us at least a 10-business day warning so we don't have to pay higher rates and to make sure we can be there too. [Joe Station Owner]

Response 44: *M.G.L. c. 21O, §6 gives MassDEP explicit authority to conduct inspections of underground storage tanks at "reasonable times". There is nothing in that section, or any other section of M.G.L. c. 21O, that limits MassDEP to conducting only announced inspections. MassDEP disagrees that the term "reasonable time" means that there has to be a "meeting of the minds" between the parties. There is nothing in M.G.L. c. 21O that indicates MassDEP has to consult with the facility to determine when the inspection occurs. The statute only requires that the inspection "shall be commenced and completed with reasonable promptness." However, MassDEP has added to the final regulation that we will contact the UST facility at least 48 hours in advance of any announced inspection.*

MassDEP understands that if it conducts an unannounced inspection it may not have access to all the equipment and records that it would if it conducted an announced inspection. However, there are legitimate reasons for MassDEP to conduct unannounced inspections, and the Department is within its statutory right to do so.

Comment 45, 80.13(1)(b), Reasonable Access: The emergency conditions covered by this section should be described further or defined. As written, it is open-ended, and subjective. Emergency conditions should be limited to the purposes of M.G.L. c. 21O, and be tied to a bona-fide emergency condition. They should not include weather related events, medical emergencies, theft or crime, or general non-specific and non-emergency- related complaints. [IOMA]

Response 45: *MassDEP amended this section to clarify that authorized representatives of MassDEP can enter an <u>UST facility</u> in an emergency situation. This language was modeled on access language in the solid waste regulations at 310 CMR 19.007.*

Comment 46, 80.13(2), Department Inspections: the following changes were requested:
80.13(2)(c): add the term 'manhole' at the end of the sentence;
80.13(2)(d): delete the word 'other';
80.13(2)(f): insert the words 'location of'; the word 'and', and the word 'equipment' so that the citation would read: "Location of audible and visual alarm equipment"

80.13(2)(g): insert the words “access port” so that the citation would read “overfill prevention access ports”;
80.13(h): The commenter believes it is appropriate to limit the scope of an inspection, and does not believe it is reasonable to require owners of operators to excavate and visually expose sub-surface UST Systems or UST components for an inspection. The commenter added these provisions to 80.13(h). [IOMA]

Response 46: *MassDEP made changes to (h) as requested by the commenter. MassDEP also added the words ‘and’, and ‘equipment’ to 80.13(2)(f). MassDEP did not add the word “location” to 80.13(2)(f) because MassDEP would like access to the alarms, not just directed to where they are located. MassDEP did not add the term “access ports” to 80.13(2)(g) because MassDEP would like access to the overfill prevention equipment itself, not just the access ports. MassDEP did not add the word ‘manhole’ to 80.13(2)(c) because MassDEP needs access to the sumps, not just the manhole covers.*

Comment 47, 80.13(4), Duty to Cooperate: “Cooperate” is a subjective term and is not required by M.G.L. c. 21(O). “Duty to *Comply”* would be more appropriate. [IOMA]

Response 47: *MassDEP made this change.*

DESIGN, CONSTRUCTION AND INSTALLATION REQUIREMENTS

Section 310 CMR 80.15, General Prohibitions

Comment 48, 80.15(1): This paragraph should be edited so that it is clear that the removal deadline for August 7, 2017 applies to all single-walled steel tanks that are in service or temporarily out-of-service. Suggest the following edits: “All single-walled steel tanks, in-service or temporarily out-of-service, shall be permanently closed and removed from the ground or permanently closed in-place in compliance with 310 CMR 80.43 by August 7, 2017, except for the following tanks:” [IOMA]

Response 48: *MassDEP made this change.*

Section 310 CMR 80.16, Installation Requirements

Comment 49, 80.16(4)-(6): Edits of these paragraphs are suggested to reflect typical UST installation procedures and to prevent conflicts between MassDEP’s prescriptive requirements and what a UST tank manufacturer may specify. MassDEP should defer to the UST manufacturer’s specifications in all instances to prevent voiding owner and operators UST warranties. In 80.16(6)(a), IOMA suggests that a “designated representative” can also adequately fulfill this requirement.

Suggested edits:

(4) Prior to installation of the tank(s), each shall pass an air pressure test of not less than three p.s.i. and not more than five p.s.i., unless otherwise directed by the manufacturer's specifications.

(5) Prior to backfilling the excavation, the UST system piping shall pass a hydrostatic or air pressure test of 150% of the maximum anticipated pressure of the system but not less than 50 p.s.i. at the highest point of the system, unless otherwise directed by the manufacturer's specifications.

(6) All UST systems shall be inspected by the person or their designated representative who prepares the drawing or as-built plans in accordance with 310 CMR 80.16(7), prior to being backfilled, to ensure the UST system is installed in accordance with 310 CMR 80.14-80.22.

(a) If the person or their designated representative who prepares the drawing or as-built plans determines the UST system is not installed in accordance with 310 CMR 80.14-80.22, the UST system shall not be backfilled until the Owner or Operator of the UST system complies with all requirements at 310 CMR 80.14-80.22. [IOMA]

Response 49: *In (4) and (5) MassDEP changed "putting regulated substance into the tank" to "after installation, backfilling and surface grading, but prior to putting regulated substance into the tank" and changed the tightness test criteria to that found in 310 CMR 80.32. This change is based on what is currently required in the DFS regulations at 527 CMR 9.00. It does not preclude the Owner or Operator from performing any additional tests that the manufacturer may require. MassDEP understands that it is an industry practice to tightness test tanks and piping prior to backfilling and surface grading, and agrees that this is important from a business perspective; however, from an environmental perspective, it is the process of backfilling and surface grading that can affect the tightness of the tank and piping which could lead to leakage and/or releases. Therefore, MassDEP will require that a tightness test be performed after the tank is fully installed and covered. Although MassDEP agrees that it is good practice to test the tank and piping prior to backfilling, it will not be a requirement in the regulations.*

In (6), MassDEP added the phrase "or their designated representative."

Comment 50, 80.16(7), Scaled Drawings and As-Built Plans: Paragraph (a) is inconsistent with c. 21O, Section (5), subsection (4), which requires that any corrective action requirements be consistent with and not duplicative with 310 CMR 40.0000 and c. 21E. The information that would be required under 80.16(7)(a) duplicates requirements of 310 CMR 40.0000 that must be submitted to the Department at the time of notification of a release under 310 CMR 40.0300 and as part the MCP Phased Reports and all remedial response action submittals. Suggest deleting paragraph (a), which would require scaled drawing or as-built plans to include a locus plan or location map showing the location of the UST facility and the GIS coordinates of the UST system, and locations of any public wells, private wells (if these can be ascertained), and any body of surface water within 500 feet of the UST system. This paragraph would also require a locus plan or location map to clearly identify drinking water wells. [IOMA]

Response 50: *MassDEP did not make this change. The requirement in (7)(a) is not a corrective action requirement. The locus plan or location map of the UST facility and UST system is required of Owners and Operators upon the installation of a new UST system. This is required so that MassDEP and other parties know where the underground equipment and drinking wells are located. This additional information gives MassDEP more information about the UST facility, and may benefit future owners who did not install the UST systems.*

Comment 51, 80.16(7): Paragraph (c) imposes requirements for scaled drawings and as-built plans to include elevations of each tank and related piping below the final surface grade and a materials list that are not necessary for installation of the tank. To collect this information will come at significant cost in hiring a land surveyor to benchmark the site and piping elevations. This information is curious, but cannot be a substitute for properly following industry construction techniques and procedures for excavation within and near USTs, underground utilities, or other subsurface appurtenances. These requirements should be deleted. [IOMA]

Response 51: *MassDEP did not make this change. This information is not a substitute for following industry construction techniques and procedures for excavation. It is an integral part of as-built plans, especially for equipment that is underground.*

Comment 52a, 80.16(10): The requirement for tanks that store Class I flammable liquid and are installed within ten feet of a building having a cellar or basement to be placed below the level of the floor of such cellar or basement is no longer relevant since the era of installing single walled steel tanks is over. This requirement should be deleted. [IOMA]

Comment 52b, 80.16(10): "Class I Flammable Liquid" is not defined, nor is a definition provided elsewhere in the regulation. While we assume that the definition is consistent with the definition used by the National Fire Protection Association, the US Department of Transportation, the US Environmental Protection Agency, the US Occupational Safety and Health Administration, and others, it should be stated. [LSPA]

Response 52: *MassDEP deleted this subsection.*

Comment 53, 80.16(12), (13), and (16): These requirements should allow for other installation approaches "as directed by the manufacturer's specifications". [IOMA]

Response 53: *MassDEP amended these sections to allow the Owner or Operator to comply with the manufacturer's specifications if they contained different specifications than the regulations.*

Comment 54, 80.16(15): This section does not contemplate the use of siphon lines between tanks, and as written tanks using siphon lines between tanks cannot comply with this requirement. Recommend that siphon lines be exempt from this installation requirement. [IOMA]

Response 54: *MassDEP made this change.*

Comment 55, 80.16(18): While this paragraph specifies the installation requirements of de-watering devices near the UST installation, these types of devices are not akin to the installation of groundwater monitoring wells which this section implies. Typically, construction dewatering wells are installed in areas where a shallow groundwater table exists at the UST location. At the time of backfilling the UST, a PVC pipe or construction drainage tube is installed to facilitate future dewatering near the UST and UST components. As proposed, these requirements make it prohibitive to install these devices. These requirements appear to mirror the construction and installation requirements for groundwater monitoring wells, which are designed to meet a far more rigorous and different objective, and is not applicable for a dewatering well. This section should provide flexibility to allow current practice, and should state that remedial actions being undertaken in accordance with c. 21E and MCP are not subject to these specific requirements. [IOMA]

Response 55: *MassDEP understands the current technique used to install these dewatering devices; however, these types of installations do not provide adequate protection to the soils and groundwater at UST facilities. The dewatering device installation criteria set forth in the regulations provides the environmental protection necessary at facilities where hazardous substances could be released proximate to the dewatering device.*

These regulations do not preclude the installation of a device described in the comment above to be used during an emergency release response action; however, a permanent dewatering device must be constructed as described in the regulations.

Comment 56, 80.16(18): While the Standard References for Monitoring Well (WSC #91-310) recommends surface seals as described in this paragraph, 20 additional years of monitoring well installations and the performance of UST “tank pads” indicate that frost heaving is relatively rare in a properly designed tank pad of approximately 10 to 12-inch thickness. We recommend that such wells have a surface seal at least as thick as the UST pad in which it is installed. [LSPA]

Response 56: *MassDEP made this change.*

Comment 57, 80.16(19): This section should be **c**larified to state that only records for testing and inspections performed at the time of installation need to be kept, not those conducted during the tank's operation. [IOMA]

Response 57: *MassDEP made this change.*

Additional clarification: 80.16(8) - Amended to mirror the requirement in 80.23(1) to notify MassDEP within 30 days of introducing regulated substance into an UST system.

310 CMR 80.17, Specifications for Tanks

Comment 58, 80.17(e): MassDEP approval of alternatives: This section should include provisions for timely action by the Department pending an application, just like it has for all program approvals and permits, including consideration of a presumptive approval provision. [IOMA]

Response 58: *All of MassDEP's schedules for timely action on permit applications are implemented through amendments of the Department's regulation for "Fees and Timely Action Schedules (310 CMR 4.00). As noted in the Background Document published with the draft regulation, MassDEP plans to propose fees and schedules for timely action for public comment to cover costs of the UST program not covered by federal UST grants from EPA.*

310 CMR 80.18, Specifications for Regulated Substance Piping

Comment 59, 80.18(1): Siphon lines between tanks should be included in the list of allowable types of piping. [IOMA]

Response 59: *MassDEP did not make this change. Siphon lines are allowable (other changes in this section make that clear), but siphon lines are not a piping system and would never be the only type of piping on an UST system.*

Comment 60, 80.18(2)(a): Non-corrodible flexible material should be included specifically as an allowable material in subparagraph (a)1. [IOMA]

Response 60: *MassDEP did not make this change because it is not necessary. "Non-corrodible flexible material" falls under the term "non-corrodible material", so it is already allowed under the regulations.*

Comment 61, 80.18(2)(b): Siphon lines between tanks should be exempt from requirements for secondary containment that this section imposes on piping carrying regulated substances. [IOMA]

Response 61: *MassDEP made this change*.

Comment 62, 80.18(3): The exceptions to requirements for secondary containment [310 CMR 80.18(2)(b)] should be explicitly recognized in the introductory sentence to this paragraph, by saying "Except as provided by 310 CMR 80.18(2)(b), all regulated substance piping shall be…" [IOMA]

Response 62: *MassDEP agrees, but it has made a different change in this section than the change the commenter requested. While siphon lines should be exempt from the requirement of secondary containment, they should still be made of a non-corrodible material or be cathodically protected.*

Comment 63, 80.18(3): The introductory statement for this paragraph should add a requirement that all covered regulated substance piping should be compatible with the product that it holds. [IOMA]

Response 63: *MassDEP made this change.*

Comment 64a, 80.18(3)(a): This sub-paragraph should explicitly allow piping to be constructed of non-corrodible flexible material. [IOMA]

Comment 64b, 80.18(3)(b): It is common industry practice to install siphon lines between the two tanks for UST systems that contain the same grade of gasoline. MassDEP should not prohibit this type of piping system, and should continue to allow its use and future installation. Siphon lines are frequently made of non-corrodible flexible material, which should also be explicitly allowed in 310 CMR 80.18. [IOMA]

Response 64: *MassDEP did not make this change because it is not necessary. "Non-corrodible flexible material" falls under the term "non-corrodible material,", so it is already allowed under the regulations.*

Comment 65, 80.18(3): This section requires that all regulated substance piping is secondarily contained. However, this is not needed for European suction systems and siphon lines, as they cannot leak regulated substances into the environment. There is no need to increase the cost of installation without any environmental benefit. [Bruce Garrett]

Response 65: *MassDEP made this change.*

310 CMR 80.19, Leak Detection

Comment 66, 80.19(2), Requirements for Tanks: Subparagraph (b)4. should explicitly include brine systems as a type of hydrostatic method. [IOMA]

Response 66: *MassDEP made this change.*

Comment 67, 80.19(2), Requirements for Tanks: Subparagraph (c)2. should only apply to in-tank monitoring systems that are used to test single-walled tanks. [IOMA]

Response 67: *MassDEP did not make this change because it is possible that there are pre-1989 double-walled tanks that use in-tank monitoring systems (automatic tank gauges or ATGs) for leak detection. DFS's regulations did not prohibit this, and MassDEP adopted the same standard.*

Comment 68, 80.19(2), Requirements for Piping: It is unclear what the draft regulation statement that "An In-Tank monitoring system that is tested at least once per month" means. Does this mean that, if an in-tank monitoring system is used, it should test the tank at least once per month? [Bruce Garrett]

Response 68: *MassDEP changed the regulations to clarify that the in-tank monitoring system must test the tank once a month.*

Comment 69, 80.19(3)(a), Requirements for Piping: Subparagraph (a) should explicitly exempt siphon lines between tanks as well as European suction systems. [IOMA]

Response 69: *MassDEP made this change.*

Comment 70, 80.19(3)(b), Requirements for Piping: Subparagraph (b) should recognize that there are many single-wall pressurized lines that were installed before 1989 that have complied with leak detection requirements by having a mechanical line leak detector and conducting an annual line tightness test. This section appears to prohibit this type of leak detection approach. If this requirement remains it will cost tens of thousands of dollars for these systems to be changed. This prohibition will also require owners and operators to immediately comply with this requirement the day the regulations become effective. This section should be modified to allow for this type of leak detection for single wall systems. The introductory sentence to this subparagraph should apply only to UST systems installed between January 1, 1989 and on or before May 28, 1999, and should explicitly exempt siphon lines between tanks (as well as European suction systems). [IOMA + Bruce Garrett]

Response 70: *MassDEP added a new subsection in the final regulations that allows single-walled pressurized piping installed before January 1, 1989 to conduct an annual tightness test in accordance with 310 CMR 80.32 to comply with leak detection requirements.*

Comment 71, 80.19(3), Requirements for Piping: In Subparagraph (b)1.b. , the requirement for quarterly monitoring of secondary containment ports should be replaced with quarterly visual inspections. [IOMA]

Response 71: *MassDEP made this change.*

Comment 72, 80.19(3), Requirements for Piping: In Subparagraph (b)1.b. , the requirement for an annual tightness test should be clarified to specify that this test must be conducted for the product piping line. [IOMA]

Response 72: *MassDEP made this change.*

Comment 73, 80.19(3), Requirements for Piping: Subparagraph (b)2. should require that pressurized systems installed before January 1, 1989 conduct an annual tightness test. [IOMA]

Response 73: *MassDEP drafted a new section of requirements for piping installed before January 1, 1989. One of the options for pressurized piping is an annual tightness test.*

Comment 74, 80.19(3), Requirements for Piping: Subparagraph (b)3. should require that suction systems with a check valve installed at the tank should have a line tightness test every three years. [IOMA]

Response 74: *A tightness test every three years is already required for Non-European suction systems installed before January 1, 1989. This requirement is found at 310 CMR 80.26(10). MassDEP has clarified this by including the requirement in 310 CMR 80.19(3) as well.*

Comment 75, 80.19(3)(d), Requirements for Piping: Since the U.S. EPA proposed to amend its Underground Storage Tank Regulation (40 CFR 280), the federal workgroup reviewing public comments submitted on that proposal has suggested that the proposed requirement for airport hydrant piping release detection (that continuous interstitial monitoring used alone or combined with an automatic line leak detector, as MassDEP proposed in (3)(d)2. and (3)(d)2.a.) should be deleted, as they are currently not feasible. Although this has not been made final, it is the workgroup's recommendation. [US EPA, Region 1, Stuart Gray]

Response 75: *MassDEP made this change.*

310 CMR 80.20, Requirements for Turbine, Intermediate and Dispenser Sumps

Comment 76, 80.20(1): The requirement for installing dispenser sumps with continuous monitoring should be limited to only those dispensers installed or replaced on or after March 21, 2008. This paragraph should exclude from this requirement any dispensers that are repaired, for whatever reason. This change would also make obsolete 80.20(1)(a), and this section should be deleted. [IOMA]

Response 76: *MassDEP made some changes to 310 CMR 80.20(1)(a) to clarify when a dispenser sump has to be installed in a repair situation, but MassDEP did not delete the requirement that dispenser sumps have to be installed during replacement or repair of the dispenser. This has been a requirement in DFS's regulations since March 21, 2008. MassDEP believes it is important that dispensers be upgraded with dispenser sumps over time so that leaks from dispensers are contained and not released into the environment. MassDEP is not including a date certain for dispensers to be upgraded, but are allowing facilities to do the upgrade when the dispenser is installed or replaced, or when repairs to the dispenser are being made.*

Comment 77, 80.20(3): The proposed deadline of January 1, 2019 for installation of turbine sumps for tanks with submersible pumps that do not have sumps does not provide enough time for Owners and Operators to arrange for financing and the installation work. Ten years from the effective date of the regulation should be provided. [IOMA]

Response 77: *MassDEP did not make this change. Submersible pumps with no turbine sumps are of serious environmental concern. A leak in the pump would result in a release to the environment because there is no containment system to hold the leak. Also, it would be difficult to determine if there was a release to the environment because the regulated product would be absorbed directly into the ground. There are also no sensors to alert the Owner or Operator that there is a leak because there is no sump in which to locate sensors.*

In a pre-public hearing draft, MassDEP proposed to require these upgrades by January 1, 2017. Based on input from the regulated community and the issues raised during the development of the draft regulation, MassDEP proposed a deadline of January 1, 2019 in the draft regulation that was issued for public comment.

Comment 78, 80.20(4): Add the word "initial" so the sentence reads "Turbine, intermediate and dispenser sumps shall pass an initial tightness test at installation…" [IOMA]

Response 78: *MassDEP did not make this change because the addition of the word "initial" is redundant and does not clarify the requirement.*

Comment 79, 80.20(5): The requirement that newly installed turbine sumps should be designed and installed to channel storm water away from the turbine sump should apply to the turbine sump manhole covers, rather than the sumps themselves. [IOMA]

Response 79: *MassDEP made this change.*

Comment 80, 80.20(6): The proposed requirement that turbine, intermediate and dispenser sumps must be constructed so that they are accessible for repairs and inspections should be deleted because compliance with this requirement is entirely beyond the control of the UST owner or operator. Tank equipment manufacturers are responsible for the constructing/manufacturing this equipment not the owner or operator. [IOMA]

Response 80: *MassDEP did not make this change because MassDEP inspectors have come across sumps, specifically intermediate sumps that have been paved over and are impossible to inspect. Owner and Operator's must ensure that intermediate sumps are not paved over. This requirement should not be an issue for turbine and dispenser sumps, as they are designed to be more accessible. Owner and Operator have an interest in ensuring that sumps are accessible so they can do inspections, remove liquid, fix sensors and make other repairs.*

310 CMR 80.21, Requirements for Spill Buckets and Overflow Prevention Equipment

Comment 81, 80.21(1): In Subparagraph (a), the definition of "Not Physically Possible" should be clarified to state that installation footprint or the manufacturer's specifications for installation of the five gallon spill bucket cannot be physically accommodated or complied with in the existing footprint, where the existing three-gallon bucket is presently installed. A sentence should be added to this explanation to state explicitly: "In demonstrating whether it is not physically possible, the Owner or Operators shall consider, but not be limited to, performing manual excavation or jack hammering to avoid any UST systems components or achieve compliance with the manufacturer's specifications for the proper installation of the spill bucket." These revisions would clarify owner and operator obligations concerning upgrading spill buckets and the factors to include in addressing size limitations and obstructions that may prevent upgrading. The standard to determine compliance with "not physically possible" should include compliance with the manufacturer's installation specifications. [IOMA]

Response 81: *MassDEP did not make these changes because the suggested language would make it possible for an Owner or Operator to never install a 5 gallon spill bucket. Installing a 5-gallon spill bucket in a hole where a 3 gallon spill bucket existed previously will generally always entail digging or jack hammering to make the hole bigger to accommodate the larger spill bucket. The intent of MassDEP's language was to give an exemption to those facilities that could not make the spill bucket excavation larger because of space constraints, but otherwise to require upgrading to 5 gallon spill buckets.*

Comment 82, 80.21(2): Subparagraph (a) should be clarified to state that: "On or after the effective date of the regulation, new or replacement ball float valves are prohibited from being used as the primary overfill protection device. Owners and Operators however, may continue to use ball floats to augment their primary overfill protection device." [IOMA]

Response 82: *MassDEP made this change and also added the following language at the end – "unless the ball float interferes with the operation of the primary overfill prevention equipment."*

310 80.22, Requirements for Corrosion Protection

Comment 83, 80.22(1): This paragraph should exclude manhole covers from requirements for corrosion protection. [IOMA]

Response 83: *MassDEP made this change. MassDEP also added the following clarifying language: "All UST systems shall be protected from corrosion."*

Comment 84 80.22(1): Subparagraph (a) should explicitly allow riser and fill pipes to be covered or taped, in addition to being coated or clad in non-corrosive materials. [IOMA]

Response 84: *MassDEP added the word "taped." MassDEP did not add the word "covered" because it is too broad.*

GENERAL OPERATING REQUIREMENTS

310 CMR 80.23, Requirements for Registration and Reporting

Comment 85, 80.23(1): The commenter does not understand why registration may be delayed for 30 days after receiving a regulated substance into an UST system. The information required to be included in the registration is critical to the safety of the UST systems and should be available to MassDEP before deliveries are made, *at least for first time registrants.* What if a spill occurs two weeks after the delivery and it is discovered that financial responsibility requirements have not been met? [Neponset River Watershed Association]

Response 85: *MassDEP did not make this change. M.G.L. c. 210, sec. 3 gives Owners and Operators 30 days to register their UST systems. However, releases to the environment are and will continue to be*

regulated under the MCP at 310 CMR 40.0000, regardless of whether the UST system is registered with MassDEP.

Comment 86, 80.23(1): Subparagraph (b) should limit the application of the thirty day requirements to update an UST registration to a smaller subset of those items listed under in 80.23(1)(a). Items not selected could be updated annually or as part of the third party inspection. [IOMA]

Response 86: *MassDEP did not make this change. MassDEP and third-party inspectors need to have up-to-date information about UST systems to ensure compliance with program requirements. Updating them every year or every three years is not sufficient. However, in order give UST facilities more flexibility, MassDEP made changes to 310 CMR 80.23(1) and (2) to allow Operators to update registrations, and submit change-in-product and change-in-status notifications, if authorized by the Owner.*

Comment 87, 80.23(3): Subparagraph (c) should be deleted, as it is inconsistent with C.21O Section 5, paragraph 4, and duplicates the requirements contained in c. 21E and the MCP. [IOMA]

Response 87: *MassDEP did not make this change. MassDEP is required to report the information in subparagraph (c) to the EPA UST program. MassDEP will continue to collect this information through the Bureau of Waste Site Cleanup, and report it to EPA through the UST program.*

Comment 88, 80.23(4): The proposed requirement that all records required to be retained by 310 CMR 80.36 be transferred to a new Owner when an UST system or UST facility is sold is compelling. However it raises several thorny issues that warrant reconsideration of this specific requirement. For instance, financial responsibility information may contain sensitive or confidential business information that the current owner or operator may be unwilling to divulge to the new owner. Second, this requirement presumes the facility will not change its land use, meaning it is presumed to continue operating, which is not necessarily always true. Third, many of the required documents will be created on behalf of the owner and operator by third parties who by contract authorize the owner and operator to rely upon these documents, although the new owner does not have this same right to rely upon these documents. By the same token, the new owner may want to perform their own testing and begin creating their own records to confirm their compliance status, and confirm everything is as it has been portrayed. There is value in transitioning these documents to new owners, but MassDEP should review the list of records in 80.36 and identify specific documents to be transferred. If necessary, consider striking this section in its entirety, and rely upon the real estate due diligence period in the marketplace to continue to govern the transfer of these documents. Also, this paragraph should specify that it applies to the Owner *of the UST system*. [IOMA]

Response 88: *MassDEP significantly narrowed the scope of Section (4). The final regulations require the transfer of as-built plans of UST systems and cathodic protection systems, and manufacturer's specification if they were required to be kept by the previous owner. MassDEP also added 310 CMR 80.23(5) which is an EPA requirement that was unfortunately omitted from the public hearing draft. It reads as follows: (5) Any person who sells an UST system intended to be used as an UST system shall notify the purchaser of such UST system of the registration obligations under 310 CMR 80.23.*

Additional clarifications:

- 80.23(1)(b) – The Operator can update registrations if authorized by the Owner, to accommodate various business models.
- 80.23(2) – The Operator can submit documents if authorized by the Owner, to accommodate various business models.
- 80.23(2)(a) – Timeframe for notifying MassDEP of a change from regulated to non-regulated substance was changed from 7 days to "prior to the change" because MassDEP does not need advance notice of the change.

310 CMR 80.24, General Requirements

Comment 89, 80.24(3): This subparagraph should require responses to every alarm that may indicate the presence of leakage or a release, and should explicitly exclude alarms caused by testing tanks, piping and components. The specific information required to be logged should be identified (delete "not limited to").

The definition of "threat of release" is far too subjective to be used as a trigger for a recordkeeping requirement and should be deleted until a concrete set of criteria are developed that everyone will be able to recognize and follow. MassDEP needs to re-define "threat of release" in concrete terms, and by example, so it is readily identifiable by a tank owner or operator, otherwise this requirement cannot be met.

These record keeping requirements represent one of largest burdens on a tank owner and operator and amounts to an overwhelming amount of information and paperwork to track, and retain for over the course of four years. During this four year period a tank owner and operator will need to make hundreds entries per tank. This is an incredible burden that needs to be lessened. The regulation should identify specific alarms, such as leakage to interstitial space of a double-wall tank that should be tracked, along with other discrete criteria rather than every alarm that falls under the broad categories of release, threat of release or leakage. Any effort to pare down, and collect truly meaningful information would be helpful to reduce this burden. [IOMA]

Response 89: *MassDEP made these changes. Please note, however, that leakage in an UST system may qualify as a threat of release under the MCP (see 310 CMR 40.0314) and the changes made to 310 CMR 80.00 does not relieve an Owner and Operator from their obligations under 310 CMR 40.000.*

Comment 90, 80.24(5): For fuel oil companies which traditionally try to "bottom out" inventories in the late Spring and do not operate their tanks from approximately May until into September, this requirement will force them to keep significant levels (10-15%) of oil in their tanks (for proper operation of automatic tank gauging and leak detection equipment). At $4.00/gallon, this will impose a significant "carrying charge" for undelivered inventory for a significant part of the year. An exemption should be included in the regulation for fuel oil companies that fall into this category. [Web Engineering]

Response 90: *MassDEP did not make this change. MassDEP believes that to protect the environment, any regulated substance must be kept in an UST system that remains in compliance with the regulations year round, especially leak detection systems. Another option for fuel oil companies is to take their tanks temporarily out-of-service for part of the year, and then the leak detection system does not have to continue working during that time.*

310 CMR 80.25, Requirements for Emergency Response

Comment 91, 80.25: This section should be titled: Requirements for UST System Emergency Response, and this section should refer specifically to an "UST system emergency" throughout. [IOMA]

Response 91: *MassDEP agrees with the comment and added "UST system or UST component" to the term emergency.*

Comment 92, 80.25(1): The term "emergency" as it appears in 80.25 is subjective and needs further clarification. As drafted, it appears to encompass all emergencies, even those beyond the reach of c. 210 and 310 CMR 80.00. The definition needs to be limited to only those emergencies related to the UST system. Medical, fire unrelated to the UST system, or crime related emergencies should not fall under this requirement. [IOMA]

Response 92: *MassDEP added the term "UST system" in front of the word emergency to clarify that under these regulation, only UST emergencies have to be covered. However, MassDEP encourages Owners and Operators to be as comprehensive as they can in training their employees, especially Class C operators on how to respond to emergencies, including fires and accidents.*

Comment 93, 80.25(1): It is unclear if a sensor alarm indicating the potential for leakage, threat of release, or release constitutes an emergency condition. A sensor alarm alone should not constitute an

emergency condition. Only after the alarm is investigated can an informed decision be made. This section should be revised so that it is clear what constitutes an emergency condition and what does not but would require a response (i.e., sensor alarms). The section should then spell out what requirements owners and operators need to follow. [IOMA]

Response 93: *MassDEP did not make this change to specify what would constitute an emergency condition. This will vary from facility to facility and MassDEP wants the regulations to be flexible enough for Owner and Operators to be able to set up emergency response programs based on the specific conditions that exist at their facilities. However, there are regulatory requirements for responding to alarms and indications of leakage or release that every Owner and Operator has to comply with.*

Comment 94, 80.25(1)(a): This subparagraph should clarify the requirements for posting this sign. While it needs to be readily viewed by station attendants, it should not be posted for viewing by the general public. It would also be useful to define "legible" (i.e., in what languages) and "prominently displayed". (i.e., where). [IOMA]

Response 94: *MassDEP added specific requirements in the final regulation as requested by the commenter. MassDEP was trying to provide UST facilities flexibility in setting up their emergency response programs. MassDEP rewrote this section to read: "The sign shall be written in large print so that employees can clearly see it from at least 10 feet away, in languages that are commonly spoken at the UST facility and be prominently displayed at various locations so all employees can see it."*

Comment 95, 80.25(1)(a): The required emergency sign should indicate precisely where the emergency procedures are located in the facility. The sign should be updated immediately whenever there is a new emergency contact person or phone number or if the location of the procedures changes. The written emergency procedures themselves should be updated whenever there is a change of equipment relating to emergency shut-offs or the location of communication devices or alarms. All new Class A, B, and C operators should, within five days of beginning work, be fully trained and told where the written procedures are located. The owner and operator should review the continuing accuracy of the sign and the written procedures every month as part of their monthly inspections and record keeping. [Neponset River Watershed Association]

Response 95: *MassDEP added a requirement that the emergency sign be updated when any information on the sign changes. Class A, B and C operators all have to be trained on emergency procedures. Class C operators, whose primary responsibility is responding to emergencies, have to be trained on actions to be taken in response to emergencies before being designed a Class C operator. In order to clarify the training requirements for Class A, B and C operators, MassDEP added a reference to 310 CMR 80.37. See the response to comment #101 for additional changes to this section.*

310 CMR 80.26, Requirements for Leak Detection Systems

Comment 96, 80.26: In light of the fact that only 33% of MA UST system Owners and Operators were in significant operational compliance with release detection requirements in 2012, the proposed regulations do not show much urgency in requiring Owners and Ooperators to respond and/or report *immediately* if a monitor indicates that there may be a release or leakage. Indeed, the triggering of a monitoring devise by its very nature represents a threat of release. For some types of leak detection equipment (e.g., UST systems that continuously monitor interstitial space in a double-walled tanks or piping as their primary leak detection systems) Owners and Operators are given 3 days to investigate after a monitor indicates a possible release or leak and another 3 days to do a tight test if the first investigation is inconclusive. Thus as many as 6 days may expire after a monitoring devise is triggered before an Owner or Operator is required to report the spill to MassDEP or take any remedial action. Under Sections 80.33 and 80.39, an additional day is given to Owners and Operators to take a leaking tank temporarily out of service. And more delay is actually *required* under Section 80.48 before MassDEP may issue a delivery prohibition (see our comments under those sections, below). Leak detection equipment itself need only be tested once a year.

We believe that in light of the potential risk posed to groundwater by UST leaks, 24 hours is a reasonable amount of time for Owners and Operators to investigate and, if the investigation is inconclusive, notify the MassDEP UST and MCP programs. This would give the Department the opportunity to determine whether further action is necessary, based on the level of risk involved (risk factors would include, among other things, depth to groundwater, proximity to drinking water supplies or critical habitats, and the nature of the product stored in the tank). Tightness testing should also be concluded within the next 24 hours and the results reported to MassDEP. Monitoring systems themselves should be inspected quarterly.

In addition, all UST system components without the modern leak detection (such as the emergency equipment subject to Section 80.26(7) and (8)) as well as consumptive use tanks subject to Sections 80.26(8)-(10)), should be required to retrofit within a reasonable time. This requirement should be reflected in the Table A Schedule of Upgrades in section 80.04(3). [Neponset River Watershed Association]

Response 96: *MassDEP did not make these changes. The triggering of a monitoring device can occur through a variety of factors, including the presence of regulated product or rainwater in a sump. The Owner and Operator should be given time to assess the situation. However, this does not trump the release and threat of release requirement in the MCP.*

Owner and Operators need time to take regulated product out of the UST system, as they usually cannot proceed without hiring a third-party.

Delivery prohibition or "red-tagging" will stop the delivery of regulated product to a UST system. MassDEP feels strongly that there has to be a process in place to ensure that the Owner and Operator have notice before this occurs. This prior notice is also a requirement under the EPA Grant Guidelines.

Some investigations require hiring a third-party which may not be feasible within 24 hours. Even though the regulations give Owners and Operators 72 hours to complete their investigations, the MCP requirements still apply.

Large consumptive use tanks are required to have leak detection. Since consumptive use tank are not required to register with MassDEP, MassDEP decided not to require smaller consumptive use tanks to retrofit with leak detection because MassDEP exempts small (less than 1,100 gallon) consumptive use tanks from most of the requirements of 310 CMR 80.00 for several reasons. First, consumptive use tanks are exempt from the notification (registration) requirements at M.G.L. c. 21O, §3. Therefore, MassDEP has no information on the universe of small consumptive use tanks. MassDEP specifically asked for information on the universe of consumptive use tanks in the background document that accompanied the draft regulation, but we received no information.

Even though MassDEP, in the final regulation, does not require retrofits for emergency generator tanks to install leak detection equipment, we did add requirements for leak detection.

Comment 97, 80.26(3)(b): As drafted, this subparagraph would prohibit the use of hydrostatic based technologies such as brine solutions to monitor interstitial spaces, which is commonly used in the industry. In addition, this requirement needs to address humidity and condensation issues that are common inside the interstitial space. MassDEP's technical basis for this requirement and the assumptions it is relying upon are inconsistent with commonly employed UST technologies and industry practice, and this subparagraph fails to anticipate common field conditions. This requirement could be replaced by a performance standard that the interstitial space "be free of regulated substance and groundwater". [IOMA]

Response 97: *MassDEP did not make this change, but added the following sentence to the section to address the commenter's concerns. "'Water' in 310 CMR 80.26(3)(b) does not include brine or condensation that occurs in a properly operating UST system."*

Comment 98, 80.26(3)(c): The word "monitor" in this subparagraph should be replaced by "sensor", and the words "or otherwise" should be deleted from the phrase "by alarm or otherwise". [IOMA]

Response 98: *MassDEP struck the word "monitor", but did not add the word "sensor" because using the term "sensor" does not include discovering leakage or release from containment ports. MassDEP did not strike the word "otherwise" because MassDEP did not want to limit the various ways that a leakage or release could be discovered.*

Comment 99, 80.26(3)(c)1.: This subparagraph should be edited to state: "Within 72 hours, the Owner or Operator shall conduct an investigation of the potential for release or leakage. If the Owner or Operator is unable to determine that there is not a release or leakage within 72 hours of the indication of release or leakage, s/he shall:…" [IOMA]

Response 99: *MassDEP struck the word "conclusively", but did not make the other requested changes. MassDEP did not move the first "within 72 hours" to the beginning of the sentence because the 72 hours starts to run when there is an indication of leakage or a release. MassDEP did not change the word "conclude" to "conduct", as the intent is that the Owner or Operator will finish the investigation in 72 hours. Using the word "conclude" makes this intent more apparent. MassDEP did not change the phrase "indication of" to "potential for" as that would broaden the investigation beyond what the Owner or Operator has to respond to in the first place.*

Comment 100, 80.26(3)(c)1.: This subparagraph should be clarified to state that a tightness test must be conducted "within 72 hours after the conclusion of the initial investigation", rather than "within 72 hours of the conclusion of the investigation". [IOMA]

Response 100: *MassDEP made these changes, but instead of using the word "initial" which may be confusing, we cited 310 CMR 80.26(c).*

Comment 101, 80.26(3)(c)2.: The reference to "release or threat of release" is confusing. It would be more clear if this subparagraph were revised to read: "If the investigation or the tightness test indicates leakage to an UST containment system the Owner or Operator shall comply with 310 CMR 80.39." [IOMA]

Response 101: *MassDEP did not add the phrase "to an UST containment system" because that is how leakage is defined and to restate that is unnecessary. MassDEP struck the phrase "that does not rise to the level of a release or threat of release".*

Comment 102, 80.26(4)(b) and (5)(c): High volume stations may have difficulty complying with this requirement. These stations should have another 30-day window to come up with a satisfactory test, prior to having to conduct a tightness test. [IOMA]

Response 102: *MassDEP did not make this change. UST facilities have 30 days to obtain a conclusive test result to determine if there is leakage or a leak in the UST system. It is a federal requirement that*

UST systems be monitored every 30 days for leaks. See 40 CFR 280.41 and 280.42. However, MassDEP edited the language of 310 CMR 80.26(4)(b) and (5)(c) to clarify the requirement.

Comment 103, 80.26(4)(b)1, (5)(c)1., and (6)(c)1.: The words "as applicable" should be added to the end of these sentences. [IOMA]

Response 103: *MassDEP made this change.*

Comment 104, 80.26(5)(b): This section does not address all UST results (i.e. Continuous In-Tank Leak Detection rate increase warning) which could be caused by a product manifold, a defective siphon jet, a defective check valve or product returning to the tank via a vapor pipe or from a condensate trap. These are not fail conditions and may not require tightness testing but should require a short period of time to conduct an investigation to resolve the underlying issue. [Berberian, Compliance Solutions]

Response 104: *MassDEP did not make this change. Although these warnings can be important indicators to an Owner and Operator as to the operation of their UST system, MassDEP is most concerned with leakage and releases.*

Additional clarifications:

- 80.26(6)(a) – SIR vendor is required to be "qualified", instead of "trained" because there is no specific training required in these regulations.
- 80.26(6)(f) – Clarified that an in-tank monitor has be used for SIR, as was the standard in 527 CMR 9.00.
- 80.26(7)(c) and (8)(c) – Owner and Operators with emergency generator tanks that indicate a possible leakage or release have to follow the same procedures as other UST system Owners and Operators in this section.

310 CMR 80.27, Requirements for Turbine, Intermediate, and Dispenser Sumps

Comment 105, 80.27(2)(a), (4)(b), 6(c): It is important to clarify that the requirements for repairing sumps are contained specifically in 310 CMR 80.33(3), where sumps are identified as a "Component" which must be repaired within 30 days. 310 CMR 80.33(1) and (2) contain repair requirements for tanks and piping respectively, and require that they be immediately be taken temporarily out of service. [IOMA]

Response 105: *MassDEP did not make this change. Although the leak or release may be detected by finding regulated product in the sump, the breach may necessitate repairs to the tank or piping. That is why the reference has to be to the repair section in general and not just to the UST component subsection.*

Comment 106, 80.27(3): This paragraph should refer to "All sump sensors", rather than the more general "Sensors" (as drafted). [IOMA]

Response 106: *MassDEP made this change.*

Comment 107, 80.27(4): it would be helpful if this paragraph would be titled "Inspection Requirements for Turbine, Intermediate, and Dispenser Sumps". [IOMA]

Response 107: *In the final regulation, MassDEP made some changes to increase the readability of the regulation, but we did not add this heading.*

Comment 108, 80.27(4)(a): This subparagraph should be revised to state that "The Owner or Operator shall visually inspect inside the access manhole for the submersible pump as follows:" [IOMA]

Response108: *MassDEP added the word "visually", but did not make the other changes. Submersible pumps that do not have containment sumps may have a manhole, but they may just be sticking out of the ground. This section has to apply to all situations where a submersible pump does not have a sump.*

Comment 109, 80.27(4)(a): Subparagraph 1. should be revised to state: "Visually inspect the submersible pump and sump for leakage or if no sump is installed inspect for a release of regulated substance(s)." [IOMA]

Response 109: *MassDEP added the phrase "visually inspect", but did not make the other changes. This section only applies to submersible pumps that do not have containment sumps. Therefore, it should not include submersible pumps that have sumps.*

Comment 110, 80.27(4)(a): Subparagraph 2. Should explicitly state that the visual inspection should identify signs of excessive corrosion, breakage and wear, and not any signs of corrosion, breakage and wear. [IOMA]

Response 110: *MassDEP did not make this change. It is important that the person doing the inspection inspects and identifies corrosion before it becomes excessive so the Owner or Operator can prevent it from becoming excessive.*

Comment 111, 80.27(5)(a): The phrase "and single-walled and double-walled sumps with continuous monitoring that do not meet 310 CMR 80.27(5)(b)1., 2. and 3." should be deleted. Just because someone fails to comply with (5)(b)(1-3) should not automatically change their required inspection frequency from annually to every 90 days. The issue of sanctions for someone who doesn't comply with those sections is best handled on a case-by-case basis separately from their required inspection frequencies. [IOMA]

Response 111: *MassDEP did not make this change. The intent of this section is to "reward" those UST facilities that have more technologically advanced equipment. However, the equipment is not beneficial unless it is properly operated and maintained. Therefore, an Owner and Operator will not get the benefit of fewer required annual inspection unless they are complying with requirements to ensure their equipment is properly operating and the Owner or Operator is responding to certain alarms and maintaining the appropriate records concerning alarms.*

Comment 112, 80.27(5)(b): The operating, testing and monitoring requirements of subparagraphs (b)1.-3. should apply to all single-walled and double-walled sumps sensors. [IOMA]

Response 112: *MassDEP did not make this change. There are sump sensor requirements that apply to all sensors at 310 CMR 80.27(3). These requirements are specifically for sumps with continuous monitoring sensors if the Owner and Operator want to have the option of conducting annual inspections. This is intended as an incentive to encourage newer technology*.

Comment 113, 80.27(5)(b)3.: The inspection frequency should not be tied to compliance with recordkeeping requirements. [IOMA]

Response 113: *MassDEP did not make this change. The intent of this section is to "reward" those UST facilities that have more technologically advanced equipment. However, the equipment is not beneficial unless it is properly operated and maintained. Therefore, an Owner and Operator will not get the benefit of fewer required annual inspection unless they are complying with requirements to ensure their equipment is properly operating and the Owner or Operator is responding to certain alarms and maintaining the appropriate records concerning alarms.*

Comment 114, 80.27(7): The deadline for testing turbine, intermediate, and dispenser sumps should be set at "no more than 2 years after the effective date of the regulation", rather than "no more than 2 years of the effective date…". [IOMA]

Response 114: *This language will not be in the final regulations. It is placeholder language that will be replaced with a date depending on when the regulations are promulgated*.

Comment 115, 80.27(7): This section requires pre-regulated sumps to be tested within two years of the effective date of this regulation. Many of these sumps were installed when testing of the sumps was not required. In 310 CMR 80.20 (3) facilities without sumps can be inspected monthly until January 1, 2019. I would request that the deadline for pre-regulated sumps be extended to the same time frame as facilities without sumps provided they are also inspected monthly. In reviewing 310 CMR 80.27(a) [Berberian, Compliance Solutions]

Response 115: *UST systems without sumps have to have visual inspections of the area around the submersible pump head because there is no sump to test. This is the only option for these UST systems. UST systems with sumps can test the sumps to ensure their integrity. There is no reason to delay this requirement more than 2 years.*

Comment 116, 80.27(7)(a): The requirement for "sumps with a sensor will be tested hydrostatically until the level they will activate the sensor or by vacuum testing" should consider that containment sumps are not flat at the low point. [IOMA]

Response 116: *MassDEP does not agree with the comment because the bottom surface of a sump does not have an impact on the ability to test the sump.*

Comment 117, 80.27(7)(a) and (7)(b): Both of these subparagraphs should use the verb "shall", rather than "will". [IOMA]

Response 117: *MassDEP made these changes.*

Comment 118, 80.27(9): The tests required by this section should determine whether the sumps hold liquid vacuum or pressure, not just liquid as drafted. [IOMA]

Response 118: *MassDEP made this change, and added new language which reads – "which may be conducted by hydrostatic, vacuum or pressure tests."*

310 CMR 80.28, Requirements for Spill Buckets and Overfill Prevention Equipment

Comment 119, 80.28(2)(b): The word "keep" should be replaced by "maintain", and the words "so that it is" should be inserted before "free". [IOMA]

Response 119: *MassDEP made these changes*.

Comment 120, 80.28(2)(e): Monthly spill bucket inspections are unnecessary, given the weekly inspections required by the Stage I regulation (310 CMR 7.24). One inspection frequency and one inspection record should be established that satisfies both programs. Also, the requirement for a single inspection frequency for all types of spill buckets fails to provide incentives for owners and operators to use improved technology such as double wall spill buckets, or equip them with sensors. MassDEP should re-evaluate the inspection and record keeping frequencies for each program and consider a more reasonable approach. MassDEP should also provide incentives for using more advanced technology by rewarding its use with less frequent and/or intensive inspections. [IOMA + Bruce Garrett]

Response 120: *MassDEP did not make this change. The final Stage I regulations requires spill buckets to be inspected weekly. For systems that are regulated under both the UST and Stage I regulations, every fourth weekly Stage I inspection (required by 310 CMR 7.24(3)(d)2.) can add the three inspection items specified in 310 CMR 80.28(2)(e) to the weekly Stage I inspection checklist and therefore meet the requirements of both programs. In addition, the UST program regulates UST systems at a broader range of facilities than just the motor vehicle fuel dispensing facilities to which the Stage I requirements apply. The UST program needs to ensure that spill buckets are inspected routinely at all UST systems, not just those covered by the Stage I requirements.*

Comment 121, 80.28(2)(e)2.: The language of this section for spill bucket inspections should be to identify *excessive* corrosion, breakage and wear, as opposed to identifying any corrosion, breakage, and wear (as drafted). [IOMA]

Response 121: *MassDEP did not make this change. It is important that the person doing the inspection inspects corrosion before it becomes excessive so the Owner or Operator can prevent it from becoming excessive.*

Comment 122, 80.28(2)(h): This provision should be deleted. It duplicates 310 CMR 80.28(g)3., immediately above. [IOMA]

Response 122: *MassDEP did not make this change. This section applies to all repairs of spill buckets, whenever and however they are detected. The language in 2(g) only applies to spill buckets that fail a vacuum or hydrostatic test.*

Comment 123, 80.28(3)(a): The requirement for having overfill protection is addressed in another section of the regulations and should not be repeated here with an ongoing requirement to continually confirm its existence. The commenter also asks for clarification of acceptable testing methods for conducting the annual testing of overfill protection devices that will satisfy this section. The proposal for overfill protection equipment to be tested annually is too frequent. These tests should be conducted as part of the third party inspection. Industry experts' experience with overfill prevention devices is that,

when they do fail, they are designed to fail in the closed position, meaning no fuel can enter the tank. MassDEP should provide programmatic data and environmental benefits that support the requirement for annual inspections. [IOMA]

Response 123: *MassDEP deleted the word "present" in this section. MassDEP did not make the other suggested changes. The regulations state that overfill prevention equipment shall be inspected and tested in accordance with the manufacturer's specification, and only if those do not exist then the overfill prevention equipment shall be inspected and tested annually. MassDEP wanted to retain flexibility in the regulations for testing the overfill prevention equipment that does not have manufacturer's specifications, as the tests are going to vary depending on the type of equipment.*

Comment 124, 80.28(3)(b): Since this section addresses overfill prevention equipment, it would be more appropriate to cite the requirements of 310 CMR 80.33(3) specifically, rather than all of 310 CMR 80.33, of which subparagraphs (1) and (2) apply to tanks and piping respectively. [IOMA]

Response 124: *MassDEP did not make this change. Although this reference to the repair section is in the overfill prevention equipment section, the necessary repair may be to the tank or the piping. That is why the reference has to be to the repair section in general and not just to the UST component subsection.*

Additional clarification: 80.28(2)(e)2. – Inspections of spill buckets must address spill bucket covers.

310 CMR 80.29, Requirements for Corrosion Protection

Comment 125, 80.29: The Department should consider an annual frequency for testing all cathodic protection (CP) systems. Currently, it is a 3-year cycle for sacrificial (galvanic) systems where cathodic protection testing shows protection of at least -900mV. Once protection is shown to be between -850mV and -900mV, the system must be tested annually. Impressed current systems must be tested annually already. The most environmentally protective measure as well as the easiest way for owners to track their testing needs would be to require an annual testing frequency for all cathodic protection systems. Most cathodic protection systems are getting older and used less frequently, an annual test would put them under more scrutiny and encourage owners of older systems to upgrade to the new requirements sooner. It would also alleviate the need for state and 3rd party inspectors to look closely at test results to determine if the site should be on a 3-year cycle or annual cycle for their CP testing. If the site has CP, it would be much easier for inspectors to simply look for an annual test of the system rather than have to dive into the detailed reports to determine an annual or 3-year testing cycle. [Crompco, Ed Kubinsky]

Response 125: *MassDEP did not make this change. The 3-year cycle is based on the NACE standard that is cited in the regulations.*

Comment 126, 80.29(2)(b): This paragraph should be revised to state explicitly that test results in the range of a negative voltage between -0.85 and "less than" -0.90 should result in the system being tested annually. [IOMA]

Response 126: *MassDEP did not make this change. It is unnecessary to insert the term "less than" because the word "between" makes it clear that if the test results are within in the range of -0.85 and 0.90, the system shall be tested annually.*

Comment 127, 80.29(2)(c): The reference at the end of this subparagraph should cite 80.29(5), rather than 80.29(4). [US EPA-Region 1, Stuart Gray]

Response 127: *MassDEP made this change.*

Comment 128, 80.29(5): The five day repair timeframe appears short given that after a failed test you have 120 days to repair or replace the entire system. A 30 day repair timeframe should be provided for any repairs by the cathodic protection tester. Such an extension will also assist in repairs discovered during the winter months when subsurface work may be hindered or delayed by frozen ground, ice, and snow cover. Also, there is value in establishing consistent and common timeframes for all repairs of UST components as appropriate. This approach will make it easier for owners and operators to remember one timeline versus multiple timelines for different parts of the UST system. [IOMA]

Response 128: *MassDEP did not make this change. The five-day time frame is the amount of time the Owner or Operator has to retain the corrosion expert. Repairs do not have to be made within in five days, but if repairs are needed, the Owner or Operator must engage a corrosion expert within 5 days of the discovery of the need for the repair.*

Comment 129, 80.29(6): The words "a repair to the cathodic protection system" should be added to the end of the first sentence in this paragraph. To categorically require testing of the cathodic protection system when any excavation is conducted is unreasonable. Testing of the cathodic protection system should be limited to situations in which repairs to a cathodic protection system are performed, or a performance standard should be established such that any excavation within five feet of the footprint of a cathodic protection system shall require testing to demonstrate that the cathodic system remains functional.[IOMA]

Response 129: *MassDEP added the word "repair" as suggested by the commenter, but also retained the phrase "excavation at the UST system." It is important include this scenario because if the UST system is excavated for any reason the cathodic protection system (which is based on the electrical flow of ions in*

the soil surrounding the UST system) may be disturbed. Therefore it is important to test the system after an excavation. However, it also makes sense to conduct a test of the cathodic protection system after a repair, even if there was no excavation.

310 CMR 80.30, Requirements for Compatibility

Comment 130, 80.30(2): This requirement should be clarified so that Owners and Operators are able to understand its meaning, and comply with it. Otherwise it should be deleted. [IOMA]

Response 130: *MassDEP clarified the language in this section.*

310 CMR 80.31, Requirements for Inventory Monitoring

Comment 131, 80.31(1)(d): The commenter supports the adoption of the 1% monthly throughput + 130 gallon acceptable loss criterion to replace the 0.5% monthly throughput current standard. [MassDOT]

Response 131: *Thank you for your comment.*

Comment 132, 80.31(1)(f): Owners and operators should be allowed additional time (30 days) to evaluate abnormal substance losses prior to requiring a tightness test. Inherent with inventory metrics is the difficulty of accurately reconciling perceived losses that may be attributable to many variables that affect inventory measurements, such as temperature of the receiving fuel and temperature of the fuel in the tank, tank size and shape, ambient temperatures, and the volumes of delivered and dispensed product. [IOMA]

Response 132: *MassDEP did not make this change. Under the regulations, the Owner and Operator are given 72 hours to determine if the abnormal regulated substance loss can be explainable by something other than leakage or a release. In addition MassDEP relaxed the standard for what is considered abnormal product loss, from 0.5% of the volume of the product dispensed over a calendar month to 1% of the volume plus 130 gallons of regulated substance dispensed over a period of a calendar month.*

Comment 133, 80.31(1)(g): Request addition of "as applicable" to the end of this sentence. [IOMA]

Response 133: *MassDEP made this change.*

Comment 134, 80.31(3)(a), Abnormal Water Gain: The requirement for daily measurements to identify abnormal water gain should be replaced with a requirement to conduct these measurements on a

monthly basis. Daily measurements are an outdated requirement in the era of double-walled tanks. This requirement was originally meant for application to single wall tanks. MassDEP should either establish different requirements for single-walled vs. double-walled tanks, or simplify it by making it a monthly requirement for all tanks. [IOMA]

Response 134: *MassDEP did not make this change. The requirement to take daily measurements to determine abnormal water gain (and daily measurements to determine abnormal regulated substance loss) is only required for tanks that are not double-walled with continuous monitoring. However, MassDEP clarified that only Owners and Operators who conduct daily inventory are required to take measurements to determine abnormal water gain.*

Comment 135, 80.31(3)(f), Abnormal Water Gain: The requirement for checking a tank within 24 hours of removing water should not apply to double-walled tanks with interstitial monitoring. Also, this section should be clarified so that the 24 hour delivery prohibition only applies when a tank showing abnormal water gain is a single-walled tank. [IOMA]

Response 135: *MassDEP did not make this change. The requirement to take daily measurements to determine abnormal water gain (and daily measurements to determine abnormal regulated substance loss) is only required for tanks that are not double-walled with continuous monitoring.*

Comment 136, 80.31(3)(g)2.: Request addition of "as applicable" to the end of this sentence. [IOMA]

Response 136: *MassDEP made this change.*

310 CMR 80.32, Requirements for Tank and Pipe/Line Tightness Testing

Comment 137, 80.32(1): The Department should eliminate 80.32(1)(a) and 80.32(1)(b). Currently, all tank and piping tightness testing equipment that is currently in use and readily available is 3rd party certified to meet a .1 gallon per hour criteria with a probability of detection of at least 95% and a probability of false alarm no more than 5% (as specified by current EPA standards). Changing the standard for equipment to be required to meet the proposed 0.05 gallon per hour criteria with a probability of detection of at least 95% and a probability of false alarm no more than 5% produces a significant challenge for equipment manufacturers and service providers. Equipment manufacturers would need to take their equipment back to a 3rd party evaluator to have their equipment recertified to the new standard, and a new listing would need to be submitted, reviewed and approved by the NWGLDE to identify all equipment certified to meet this new standard. In addition, the end users (service providers) would need to purchase new and/or upgraded equipment needed to meet this new standard which would result in significantly increased costs to owners/operators

to have tightness tests performed on their tanks and piping. While in theory we agree that this is a good idea to raise the level of performance of the equipment used for conducting tank and piping tightness tests in the field, we disagree with the unrealistic deadline of January 1, 2016 to have this equipment 3rd party certified to the new standard, listed with the NWGLDE and have trained technicians with the new/upgraded equipment in hand to perform the tests in the field and meet this new standard. [Crompco, Ed Kubinsky]

Response 137: *MassDEP proposed this change in the draft regulation to raise the level of performance, but also to be consistent with the standard in the MCP (see 310 CMR 40.0314). In the final regulation, MassDEP moved the deadline to January 1, 2018 in order to give testing companies more time to have the equipment certified to the new standard.*

Comment 138, 80.32(1)(a): The words "Effective through" at the beginning of this paragraph should be replaced with "Until". [IOMA]

Response 138: *MassDEP made this change.*

Comment 139, 80.32(2)(b) and (2)(c): Owners and Operators should be allowed to compile a log as an alternative to a "report". [IOMA]

Response 139: *MassDEP made this change.*

Comment 140, 80.32(3)(b), Tightness Test Failures: The word "immediately" should be moved from its location in the draft following "in which the UST system is located" to follow "the certified tightness tester shall". [IOMA]

Response 140: *MassDEP made this change, but also moved the phrase "but in no event later than 24 hours after obtaining knowledge of the failed test."*

Comment 141, 80.32(3)(c), Tightness Test Failures: Request inclusion of the full name of the cited regulation (the Massachusetts Contingency Plan).

Response 141: *MassDEP did not make this change as the title of 310 CMR 40.0000,the Massachusetts Contingency Plan is not included with other citations of 310 CMR 40.0000 in 310 CMR 80.00.* [IOMA]

310 CMR 80.33, Requirements for Repairs and Replacements

Comment 142, 80.33, 80.39, 80.42 and 80.43: Industry experts do not understand how sections 80.33 - Repair and Replacement; 80.39 - Response to Leakage; 80.42 - Temporarily Out-of-Service; and 80.43 - Removal and Closure in Place are meant to operate together either conceptually or as drafted. These sections describe the requirements and timelines that owners and operators must follow in order to properly make repairs or replace equipment. These sections are also further conditioned, based on whether or not repair activities are precipitated by a release, threat of release, or leakage. The requirements described at Response to Leakage at 80.39(1)(a) contradict the requirements contained in Repair and Replacement described at 80.33(2). In one instance you have to immediately take the leaking piping temporarily out-of-service and in the other all you need to do is isolate and repair that section of pipe. Another concern is in 80.33 (Repair and Replacement) where the regulation directs owners and operators to comply with the temporary out-of-service requirements in 80.42. However, 80.42 lists a set of requirements that appear to be apply solely to a tank, but the requirements also appear to apply to piping as well. The "one size fits all" listing of requirements doesn't work here. For example, why do owners and operators need to empty the contents of the UST, cleanout any residuals, and inert the tank in order to repair or replace a section of piping? Temporary Out-of-Service requirements should be tailored for each specific UST element.

Another cause for confusion is related to conflicts among several fundamental definitions used for describing UST elements. Distinctions should be made in the definitions to isolate and describe specific requirements for a particular element of an UST, so that it is transparent how to apply these regulations. Specifically, the definition of "Component" includes tank and piping when it should not, as these terms are also contained within the definition of a UST system. This conflict makes the two definitions indistinguishable from each other. Another term that amplifies the confusion is caused by the fuzzy (and even mythical) definition of "threats of release." This term is unclear and ambiguous, it is not clear how someone can comply with the requirements contained in 80.33(2) which require an understanding of the term "threat of release."

MassDEP should create a flow chart that maps out the steps (using a simple "yes" or "no" decision tree), and describe all of these processes within each of these sections. Once this is completed, the Department can then begin sorting out and clarifying these procedures, and develop sensible and transparent requirements. [IOMA]

Response 142: *MassDEP revised 310 CMR 80.33, 80.38 and 80.39 and certain definitions in the final regulation to respond to the commenter's concerns. Overall, MassDEP agrees that these sections needed to be edited to ensure that they worked together and did not contradict each other. MassDEP removed the term "threat of release" from the final regulations, and directs Owners and Operators to the MCP to determine if they have a "threat of release." There is a specific section in the MCP that deals with threats of releases from UST systems (310 CMR 40.0314). MassDEP plans to work with stakeholders on outreach and implementation guidance after the regulation is final.*

Comment 143, 80.33(1): In all cases that constitute "leakage" as defined by the proposed regulation, an opportunity to determine whether potential failure of the tank or tank component has actually occurred along with the opportunity to correct (repair or replace) that condition, should be permissible over a reasonable time period (significantly more than the 24 hours as itemized in this section). This includes an investigation associated with oil and/or water in the interstice of a double-walled tank. The condition is further confused by Section 40.0314(2) of the Massachusetts Contingency Plan, which appears to suggest that oil in the interstice of a double-walled tank constitutes a "threat of release" when in fact it isn't unless proven by a proper test methodology. [Web Engineering]

Response 143: *MassDEP amended this section in response to several comments. In the final regulation, a tank that has* ***released*** *regulated substance has to emptied (not taken temporarily out-of-service), within 24 hours of obtaining knowledge of a release. A tank that has l****eakage*** *also has to emptied, but within 72 hours of obtaining knowledge of leakage. The term "empty" has been defined in the regulation as "when all regulated substance has been removed from a tank using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the tank, remains in the tank." This will control the source of the leakage or release (and limit environmental damage), without requiring implementation of all of the "temporarily out of service" requirements. In the event that leakage is sufficient to meet the criteria for "threat of release" or "release" under the MCP, the Owner and Operator have to comply with that regulation, as applicable.*

UST components are subject to 310 CMR 80.33(4) and do not have to be taken out of service if they need to be repaired or replaced. UST components have to be repaired or replaced within 30 days, unless more time is requested and approved by MassDEP.

The language of 310 CMR 40.0314(2) requires notification to MassDEP within 72 hours if there is a substantial likelihood of a leak greater than or equal to 0.05 gallons per hour in the inner wall of a double-walled tank. This notification provision in the MCP is separate from and does not conflict with the requirement in the UST regulations to empty a tank if there is regulated product in the interstitial space of a tank.

Comment 144, 80.33(1): The first clause of this sentence should be clarified, by stating: "Any tank, excluding piping and components, which is the source of leakage…" Examples of conditions triggering this provision include leakage of regulated substance to the interstitial space of a double wall tank, or release or regulated substance from a single wall tank to the environment, or release to the environment from the outer wall of a double wall tank. No other circumstances would appear to trigger this provision. These or similar examples should be included to assist the reader in understanding this and other provisions.

Also if a tank must be taken out of service within 24 hours, how can it be retested, either to confirm a previous test result, which is allowed under the MCP or to confirm the efficacy of a repair, or to review of Statistical Inventory Reconciliation (SIR) information? [IOMA]

Response 144: *MassDEP did not include the phrase "excluding piping and components" as it is not necessary because the sentence begins "A tank…" MassDEP agrees with the examples cited by the commenter on what leakage may entail. However, since leakage is a defined term, and MassDEP does not want to inadvertently leave any leakage situations out of this requirement, MassDEP is not going to include a list of what leakage is in the regulations.*

MassDEP changed the time that a tank with leakage has to be emptied from 24 hours to 72 hours.

A tank can be tightness tested if it is empty to ensure that it can hold regulated product.

Comment 145, 80.33(1): Section 80.33(1) gives owners and operators a full 24 hours to take a tank temporarily out-of-service after obtaining knowledge of leakage or release. The rationale for this delay is unclear in light of the fact that Sections 80.33(2) and 80.39(1)(a) allow no delay in taking other parts of the UST system out-of –service; in fact, Section 80.33(2) requires that those UST components be *immediately* taken out of service even if there is a "*threat*" of release. The rules for temporarily taking an UST tank out of service should be the same as for other UST components. [Neponset River Watershed Association]

Response 145: *The 24 hour provision allows an Owner and Operator the time to hire a third-party to empty the tank. This cannot be done by the Owner and Operator and therefore cannot be done "immediately." However, if there is an imminent threat or a release that triggers reporting to the MCP, the MassDEP Emergency response team or the LSP may require the tank to be emptied faster.*

Comment 146a, 80.33(2): The first clause of this sentence should be clarified by stating: "Any piping that is the source of leakage or release of regulated substance, that portion thereof shall be immediately taken temporarily out-of- service in accordance with …" Examples include piping leaks to the inner wall of double-walled piping, single-walled piping releases to the environment, and single- or double-walled piping releases to sumps or other containment structures. For threats of release, these circumstances cannot be determined given the current definition of this term. Even when the definition of "threat of release" is clarified, repairs for a "threats of release" should be provided with an alternative track to conduct further investigation or repair without triggering 80.43, unless it is determined otherwise that a release or leakage has occurred. Examples of the need for an alternative track include conducting repairs to piping or fittings that show wear or excessive corrosion, or conducting follow-up review of SIR calculations and related information. A specific section of the regulation should be created in 80.43 to clearly establish the requirements for taking a section of piping temporarily out-of-service. These

requirements should be separate from those for tanks, or components. This section also conflicts with the requirements in Response to Leakage contained in 80.39(1). [IOMA]

Comment 146b, 80.33(2): This section mentions "leakage" (which the commenter takes to include "leakage" into the interstice of the tank itself) with the requirement to take the UST system "temporarily out of service" to conduct repairs/replacements. Requiring "temporary" or "permanent" out of service status for an UST system should only be imposed for confirmed tank or single-walled piping releases to the environment or a proven failure of either wall of a double-walled tank. Repairs to all other system components (including leakage associated with the primary wall of secondarily contained piping) can be accomplished without requiring "temporarily out of service" status and all the costly tank emptying and inerting responsibilities that go along with it. [Web Engineering]

Response 146a and b: *MassDEP agrees it makes sense to treat repairs of piping differently from tanks. Piping can be immediately isolated and emptied by the Owner or Operator, whereas emptying the tank requires hiring a third party.*

MassDEP re-wrote this subsection as follows: "Any piping or portion of piping that is the source of leakage or a release shall be immediately isolated, emptied of regulated substance, and shall remain empty until said piping or portion of piping is repaired or replaced or the UST system is permanently closed or removed in accordance with 310 CMR 80.43(2) or (3)."

Comment 147, 80.33(3): The introductory sentence to this paragraph should be edited to state: "The Owner or Operator shall repair all UST Components within 30 days of the discovery of the need for repair or replacement, unless the UST Component is taken temporarily out-of-service, removed, or…" [IOMA]

Response 147: *MassDEP agrees that this section should apply to UST Components, but it should also apply to tanks and piping that have not had leakage or released regulated product. In order to cover all repairs, 310 CMR 80.33(1) will apply to tanks that have a release; 310 CMR 80.33(2) will apply to tanks that have leakage; 310 CMR 80.33(3) will apply to piping that has leakage or a release; and 310 CMR 80.33(4) will apply to tanks and piping (UST systems) and UST components that need repairs, but have not had leakage or released regulated product.*

MassDEP re-wrote 310 CMR 80.33(4), in part, as follows: "The Owner or Operator shall repair or replace UST systems, that are not subject to 310 CMR 80.33(1), (2) or (3), and UST components within 30 days of the discovery of the need for repair or replacement, unless the UST system is taken temporarily out-of-service, removed or permanently closed, in accordance with 310 CMR 80.42 or 80.43, within 30 days of the discovery of the need for the repair or replacement."

Comment 148, 80.33(3)(c): The phrase, "due to circumstances beyond the Owner and Operator's control," should be deleted. Such a condition will negatively affect single station operators who may come up against an unexpected repair and will need time to access capital for conducting the necessary repairs. These cases are best handled on a case-by-case basis and should not be categorically precluded from complying with a repair or replacement plan and remain in compliance. In addition, this section does not provide certainty to the owner and operator. No schedule for timely action on the Department's approval is defined, nor does the agency propose using a presumptive approval process for these requests. MassDEP should establish a procedure for timely approvals. IOMA also recommends striking the conditional phrase "due to circumstances beyond the owner's or operator's control." [IOMA]

Response 148: *MassDEP did not delete the phrase "due to circumstances beyond the Owner and Operator's control." This gives an Owner or Operator some leeway if the part they ordered is backordered or the weather is such that the repair cannot be made. However, the Owner and Operator will be held responsible for repairs that are not made within 30 days if it was in their control to make them. MassDEP did change the language so that an Owner or Operator need only notify MassDEP is the repair cannot be made within 30 days and provide the schedule for completion. Then the Owner or Operator must notify MassDEP when the repairs are complete. MassDEP deleted the requirement that MassDEP has to approve the extension.*

Comment 149, 80.33(6): The citation at the end of the section should be changed from 310 CMR 80.36(5) to 310 CMR 80.36(1). [IOMA]

Response 149: *MassDEP did not make this change because it is a federal requirement that records of repairs be kept for the life of the UST system.*

310 CMR 80.34, Requirements for Compliance Certification

Comment 150, 80.34: The commenter is generally comfortable with the concept of compliance self-certification. However, MassDEP's current lack of an operational Information Technology (IT) system capable of tracking 4,500 certifications (as well as numerous return to compliance actions), means that these certifications will provide little or no significant reduction of risk since effective tracking and follow-up cannot currently be handled by existing UST staff. The Background Document says MassDEP "is procuring contractor services to develop an enhanced IT system for the UST Program," but doesn't present a timeline as to when this system will be rolled out. Until such system is fully operational, UST staff should be used to conduct more frequent inspections instead of dealing with masses of untrackable paper certifications (although it might not be a bad idea to require one initial compliance certification for UST facilities in order to educate owners and operators of the new regulatory requirements).

Once the Department upgrades its computers, there is no reason why our UST facilities should be required to certify only every three years when their compliance levels are far lower than other ERP sectors which must certify annually (i.e., dry cleaners, photo processors and printers). As we recommend below under Section 80.49, third-party inspections should occur every other year, with certifications done in the off years.

Certifications should not only cover current compliance, but also the dates and number of incidences of non-compliance that have occurred during the reporting period (unless the Department requires owners and operators to submit this information directly). Return to Compliance Plans are only required in the proposed regulations if a facility is out of compliance at the time it submits its certification. If an owner or operator waits until a week before his/her certification is due before coming into compliance, but has been out of compliance most or all of the rest of the time, this is critical information for MassDEP to be aware of and, if appropriate, acted upon, especially for critical components of the UST system such as leak detection.

Finally, this section should specify that UST systems that are out of compliance at the time of certification must be taken temporarily out-of-service if required to do so under Sections 80.33 or 80.42. [Neponset River Watershed Association]

Response 150: *MassDEP (and its Information Technology contractor) is currently designing an online database for the UST program reporting requirements. MassDEP anticipates that the database will be up and running by the fall of 2015.*

Although Owners and Operators are required to certify every three years, they are also required to have a third-party inspection every three years. They have been staggered so that there is an "inspection" and report to MassDEP every 18 months.

MassDEP is currently working on developing the compliance certification form and will consider the commenter's ideas about what should be included.

If an UST facility has to be taken temporarily out-of-service pursuant to the regulations, that will have to be done regardless of whether there is a certificate of compliance due to MassDEP at that time.

Comment 151, 80.34(1)(e): The words "as applicable" should be added after "That" (first word in this subparagraph). [IOMA]

Response 151: *MassDEP made this change.*

Comment 152, 80.34(2): The words "at the time of submission" should be added at the end of the first phrase in this paragraph (after "with any of the requirements on the Certification Form,"). How can you

return to compliance if a record or inspection was not recorded? You cannot go back in time and re-inspect, or record a result that was not taken? How will these cases be handled? Language should be included in this section that anticipates this circumstance, and describes how it will be handled.[IOMA]

Response 152: *MassDEP added the phrase "at the time of submission", but inserted it at the beginning of the sentence. MassDEP did not make the other changes. The language, as written, is broad enough to include situations where the Owner and Operator cannot come back into compliance with a past violation.*

Comment 153, 80.34(2)(c): The Return to Compliance plan described in this section should also be provided to owners and operators who cannot make repairs within the allotted 30 day timeframe required by 80.33, instead of creating another separate process. The only difference between the two is temporal, and how they were discovered. [IOMA]

Response 153: *MassDEP did not make this change because we simplified the process in 310 CMR 80.33 for Owners and Operators who cannot make repairs in 30 days.*

310 CMR 80.35, Requirements for Monthly Inspections

Comment 154a, 80.35(1)(a): The words "under the direct supervision of…" should be replaced by "under the direction of…". The term "direct supervision" is not defined. Absent additional the currently used term "direction of" should be used instead. [IOMA]

Comment 154b, 80.35(1)(a): "Direct supervision" is not defined in the proposed regulation, and as such is open to interpretation. It would be burdensome and inefficient for the commenter's A/B Operators, most of whom are responsible for a number of UST facilities within their assigned District, to be present to personally conduct or witness the required monthly UST inspections. The personnel conducting monthly visual inspections (Class C Operators for this commenter's operations) are under the direct supervision of the Class A or B operators who are available to answer questions, provide guidance for identified problems and feedback on inspection results. The commenter does not construe "direct supervision" to imply that the physical presence of the A/B Operator is required at any monthly inspection conducted by a Class C Operator. MassDEP should either define "direct supervision" in the final regulation or provide additional written guidance to the regulated community about this requirement. [MassDOT]

Response 154a and b: *MassDEP changed "under the direct supervision of…" to "under the direction of…".*

Comment 155, 80.35(1)(a): Monthly inspection requirements in this section are a critical component of the Department's UST regulatory system and should always be done by Class A or B operators, not just under their "supervision," whatever that means. It doesn't seem possible for a Class A or B operator to supervise a *visual* inspection without being present and if the operator is present, he or she has no reason for not doing the inspection him or herself. He/she should be allowed to be assisted, however, in the physical tasks required for monthly inspections. [Neponset River Watershed Association]

Response 155: *In drafting the UST regulations, MassDEP had to consider all the different types of UST facilities. Some are singled-owned gas stations and some are part of large companies. If a Class A or B operator is designated for 50 or more UST facilities, it may be very difficult for s/he to personally perform all the monthly inspections. However, the Owner and Operator of the facility are ultimately responsible for the ensuring the monthly inspection is completed, and completed correctly.*

Comment 156, 80.35(3): If a visual inspection indicates that an UST component is not properly operating or maintained, the owner or operator "shall repair said component(s) in accordance with 310 CMR 80.33." That section generally gives owners and operators 30 days to complete the repair, even for leak detection equipment and other critical components. Taking the component out-of-service, however, is only required if the visual inspection indicates leakage or release of regulated substances or (in the case of components other than tanks, if there is a threat of release). As noted in our comments on Section 80.33, above, we believe that critical UST components such as leak detection equipment should be repaired or replaced within 48 hours unless the system is taken temporarily out-of-service, even where there is only a threat of release. [Neponset River Watershed Association]

Response 156: *MassDEP did not make this change. Owners and Operators must be given a reasonable about of time to make repairs, if there is no leakage or release.*

Comment 157, 80.35(3): MassDEP should reconsider the language in this section. Many of the elements contained in 310 CMR 80.00, the manufacturers' specifications, and applicable codes and standards will not be visible or accessible during the visual inspection, and therefore it would be unfair to hold someone to this standard that cannot be met. A subset of these elements that are visible should be listed instead. [IOMA]

Response 157: *MassDEP did not make this change because the Owner and Operator are required to operate their UST systems in compliance with the UST regulations, manufacturer's specifications and certain codes and standards. The purpose of the monthly inspection is for the Owner or Operator to become familiar with these standards and how they apply to their individual facilities.*

Comment 158, 80.35(4): Owners and Operators should be allowed to compile a monthly inspection log as an alternative to a monthly inspection "report". [IOMA]

Response 158: *MassDEP made this change*.

310 CMR 80.36, Requirements for Recordkeeping

Comment 159a, 80.36: The record keeping requirements are far more detailed than the existing regulations. MassDEP should review those requirements and reduce the volume and length of time that the records must be kept. There are far more deficiencies with respect to record keeping than with the various components of a tank system. [Bruce Garrett]

Comment 159b, 80.36: The proposed expanded record keeping requirements would increase the various time frames records are to be retained, and will create undue burden on small marine fueling operators (most marine fueling operations are quite small, in relation to the entities these regulations seem meant to target). Although record keeping is important, it only makes sense that critical records which benefit environmental protection be retained under the revised regulations. We ask that more manageable record keeping standards be adopted, or small business exemptions put in place. [MA Marine Trade Association]

Comment 159c, 80.36: Daily, weekly, monthly, and annual record keeping is often redundant and difficult to manage for most small businesses. These tasks, as important as they are to keep the environment safe, must somehow be made more manageable. With the technological monitoring in place these days, the written reporting is not as necessary and burdens the small business owner with hiring more personnel to keep track of all this duplication. Record retention must also be of a reasonable time frame. With continuing recording and monitoring, it seems the new record could replace the old, eliminating the need to save and store the old.

Seasonality of marine businesses should also be considered when finalizing monitoring and recordkeeping regulation. Most marinas' fueling operations sit idle from November to May, which makes daily record keeping burdensome where there is no usage. Again, the technological monitoring, such as a Veeder Root monitoring system should be adequate to detect any problems. [Cape Cod Marine Trades Association]

Response 159a, b, and c: *This section includes records that MassDEP, and third-party inspectors will need to review to determine if a UST system is in compliance with the regulations. Under the DFS regulations, all records had to be kept for the life of the UST systems. MassDEP determined that most records only need to be kept for four years and that is reflected in the regulations. For other records, such as registration and third-party inspection reports, only the most recent version needs to be retained.*

MassDEP amended subsection (1)(h) to clarify that only monitoring records for SIR (80.26(6)) and emergency generator tanks (80.26(7) and (8)) need to be retained under this requirement.

MassDEP is aware that there are seasonal business including marinas and golf courses that do not use their UST systems all year. The business may not be operating, but this does not relieve the Owner and Operator from complying with the UST regulations. Seasonal business can either continue to keep their UST systems in use and comply with all the relevant regulations, or they can take the tanks temporarily out-of-service.

Comment 160, 80.36(1): Given the significant burden of maintaining the specified operating, testing, and inspection records, the record retention period should be reduced to three years. This will allow the most recent three years of records to be available for the third-party inspections which occur every three years, the compliance certifications which occur every three years (18 months after the third-party inspection), and when requested by MassDEP and EPA. [MassDOT]

Response 160: *MassDEP did not make this change. The Commenter's reasoning makes sense, but unfortunately not all third-party inspections are completed on time. The four year record retention requirement is necessary so a third-party inspector will have access to relevant records even if the third-party inspection is late.*

Comment 161, 80.36(1)(f): These record keeping requirements represent one of largest burdens on a tank owner and operator and amounts to an overwhelming amount of information and paperwork to track, and retain for over the course of four years. During this four year period a tank owner and operator will need to make hundreds entries per tank. This is an incredible burden that needs to be lessened. The regulation should identify specific alarms, such as leakage to interstitial space of a double-walled tank that should be tracked, along with other discrete criteria rather than every alarm that falls under the broad categories of release, threat of release or leakage. Any effort to pare down, and collect truly meaningful information would be helpful to reduce this burden. [IOMA]

Response 161: *See DEP's responses to Comments 89 and 90 regarding 310 CMR 80.24*

Comment 162, 80.36(1)(n): Owners and Operators should be allowed to compile a monthly inspection log as an alternative to a monthly inspection "report".

Response 162: *MassDEP made this change.*

Comment 163a, 80.36(5)(a): The requirement to maintain records of each equipment repair or replacement in accordance with 80.33(6) should be deleted. In addition to hiring an attorney and a tank inspection and compliance specialist, owners and operators will also need to hire a data/records management specialist to maintain and keep track all of the required records, logs, and reports, as well as monitor related compliance deadlines (of which there are many). The regulations specify twenty

seven (27) or more separate requirements for all the records and reports owners and operators need to keep. In addition to the 27 pieces of information, in these requirements there may be other requirements that call for entries on a daily, weekly, monthly, annual, every 18 months, every two years, and every three year, basis. This amounts to an astounding and overwhelming amount of information.

Owners and operators are expected to retain much of the information for a minimum of four (4) years so it can be available for the triennial inspection. However, in 80.36(5) owners and operators will be required to retain all records for each equipment repair or replacement until the UST system is removed or permanently closed in place. IOMA requests that this requirement be pared down to only retaining records of substantial repairs and replacements. This requirement should not be the equivalent of keeping every record and receipt of every oil-change, brake pad replacement, headlight bulb replacement, tire replacement and rotation, tune-up or muffler replacement that you would have for an automobile. Instead, this documentation requirement should be limited to instances of "major service" being performed on the UST system. A lot is at stake with all of these regulatory requirements, especially with the volume and scope of record keeping requirements as is illustrated in the enabling statute (c.21O) and further described in 80.12 which describes the overarching presumption of non-compliance with any of these requirements, through the "presumption of irreparable harm". This presumption means that any violation of these regulations constitutes irreparable harm to public health, safety and welfare, and to the environment. So, if an owner or operator loses a record or misses an entry, or misplaces a repair record, they may be issued a notice of non-compliance and be assessed penalty. A lot is at stake. MassDEP should take a fresh look at all of these record keeping and report requirements and eliminate those that are unnecessary, or will not be used by the Department, so that we can reduce the volume of records and the regulatory burden this requirement will place on UST owners and operators. [IOMA + Joe Station Owner]

Comment 163b, 80.36(5)(a): DEP needs take a fresh look at all of these record keeping and report requirements and eliminate those that are unnecessary, or will not be used by anyone, so that we can reduce the volume records we have to keep and make it less of a burden. We also don't want to be fined for losing a piece of paper or not putting in an entry two years ago. [Joe Station Owner]

Response 163a and b: *MassDEP did not strike the requirement to keep records of repairs for life of the UST system because this is a federal requirement.*

The records that MassDEP is requiring be kept by Owners and Operators are necessary to determine whether an UST facility is in compliance with the regulations. The DFS regulations required that all records had to be kept for the life of the UST system. MassDEP determined that most records only need to be kept for four years and that is reflected in the regulations. For other records such as registration and third-party inspection reports, only the most recent version needs to be retained.

LEAKAGE AND RELEASE: RESPONSE, REPORTING AND REMEDIATION

310 CMR 80.38, Response to a Release or Threat of Release

Comment 164, 80.38: The words "release or threat of release" in the introductory sentence should be qualified by adding "to the environment as defined by M.G.L. c. 21E and 310 MCR 40.0000." In addition, the words "as applicable" should be added before "with 310 CMR 40.0000". It is unclear which definition of "release" or "threat of release" and which DEP program (BWP or BWSC) is being referenced here. Please clarify. [IOMA]

Response 164: *MassDEP has removed the term "threat of release" from the final regulation and defers to the MCP and the Bureau of Waste Site Cleanup to determine what a "threat of release" is, in regards to UST systems and UST components.*

MassDEP did not add the phrase ""to the environment as defined by c. 21E and 310 CMR 40.0000". The definitions in 310 CMR 80.00 are used for the UST regulations. At the beginning of the definition section in 310 CMR 80.03 is the following sentence: "For the purposes of 310 CMR 80.00, the following terms shall have the followings meanings:"

As stated in response to several other comments, the definition of "release" in 310 CMR 80.00 is very similar to the definition in 310 CMR 40.0000, but that definition only applies to UST systems where the definition in 310 CMR 40.0000 apply to all release of oil and hazardous material. In addition, the definition of "release" is from the UST authorizing statute, M.G.L. c. 21O.

MassDEP added the phrase "as applicable." MassDEP clarified the requirements for tanks and piping that have released regulated substance in order to make this section consistent with 310 CMR 80.33. MassDEP also clarified the language of this section to ensure that Owners and Operators understand their obligations to empty tanks and piping in the event of a release or leakage.

310 CMR 80.39, Response to Leakage

Comment 165, 80.39: This section should also include a simple straightforward approach for leakage from UST components other than those related to tanks and piping, such as dispensers. [IOMA]

Response 165: *MassDEP did not make this change. Leakage is the escape of regulated product from an UST system – the tank or the piping. The definition (and therefore this section of the regulation) does not include the escape of product from an UST component because the tank and the piping are the only equipment that should routinely contain regulated product.*

Comment 166, 80.39(1): Add the words "visual inspection" after testing, since these inspections may identify leakage. [IOMA]

Response 166: *MassDEP made this change.*

Comment 167, 80.39(1)(a): The words "visual inspection or other evidence" should be added after "testing" in the first line of this paragraph. [IOMA]

Response 167: *MassDEP made this change.*

Comment 168, 80.39(1)(a)1.: The words "or replace" should be added after "Isolate and repair". [IOMA]

Response 168: *MassDEP re-wrote this section to read: "Isolate and empty the section of piping determined to have leakage until the section is repaired or replaced; or"*

Comment 169, 80.39(1)(b): 72 hours should be provided to empty a tank that has been found to be the source of leakage, rather than the 24 hours proposed in the draft regulation. This would provide a more realistic and reasonable timeframe to arrange for removal of the contents of the tank. This change would also be consistent with the 72 hour notice provision for a threat of release under the MCP.

Response 169: *MassDEP made this change.*

310 CMR 80.40, Reportable Releases

Comment 170, 80.40: This entire section is inconsistent with c. 21O Section 5, paragraph 4, and duplicates existing requirements contained in M.G.L. c. 21E and 310 CMR 40,0000. This section should be eliminated since the information it would require to be reported to MassDEP is already being collected by the Bureau of Waste Site Cleanup. [IOMA]

Response 170: *MassDEP did not make this change. MassDEP is required to report the information in subparagraph (c) to the EPA UST program. MassDEP will continue to collect this information through the Bureau of Waste Site Cleanup, and report it to EPA through the UST program.*

CHANGE-IN-PRODUCT, OUT-OF-SERVICE SYSTEMS AND CLOSURE

310 CMR 80.41, Requirements for Change-in-Product

Comment 171, 80.41(4)(a): In order to comply with 80.41(4)(a) this section appears to presume that the tank is out of the ground, and can be tipped, to remove all regulated substance from the tank bottom. This may not always be the case. An alternate standard is needed in this section for tanks remaining in the ground. [IOMA]

Response 171: *MassDEP did not make changes to this section. A tank does not have to be removed from the ground and tipped to remove all the solid and liquid material. There are other acceptable ways to clean out the tank, such as vacuuming. See for example, API 1604, sec. 1, 3 and 4.1-4.4.*

Comment 172, 80.41(4)(b): The phrase "except that the Owner and Operator shall continue to be responsible for remediating any releases of regulated substances that occurred" should be deleted. This language duplicates the requirements of 310 CMR 40.0000. [IOMA]

Response 172: *MassDEP did not make this change. It is important for Owners and Operators to understand that liability for a release does not end if the tank is no longer regulated under 310 CMR 80.00. The requirement is not duplicative because the corrective action requirements for UST systems are in 310 CMR 40.0000, not in 310 CMR 80.00.*

Comment 173, 80.41(5): Why do you need to empty the tank if the regulated substances are compatible (for example changing from #2 fuel oil to diesel, or gasoline to diesel)? This requirement is warranted for non-petroleum changes-in-product, but an exclusion for petroleum should be added allowing changes in petroleum motor fuel products to occur without emptying the contents and removing residuals within the tank. [IOMA]

Response 173: *The final regulation requires that tanks be emptied when changing fromone regulated substance to another regulated substance , including when changing from one type of petroleum product to another (e.g., changing from gasoline to diesel). Different types of petroleum products have different flash points and other characteristics, and there are both safety and vehicle/customer protection considerations that dictate that different types of fuels should not be mixed together. Please note:*

- *The regulation does not require that a tank be emptied when changing from one grade of gasoline to another grade of gasoline, and*
- *"Empty" is defined as "all regulated substance has been removed from a tank using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the tank, remains in the tank." All residuals do not have to be removed as long as this standard is met.*

Additional clarification:

- 80.41(3)(b) – The timeframe for notifying MassDEP of a change from regulated to non-regulated substance changed from 7 days to "prior to the change" because MassDEP does not need notice of the change that far in advance.

310 CMR 80.42, Requirements for Taking an UST System Temporarily-Out-of-Service

Comment 174, 80.42: This section needs to develop separate Temporary Out-of-Service requirements for tanks, piping and UST components as applicable. A "one size fits all" approach to tanks and piping alone doesn't work. For example, if an owner or operator is replacing a piping run that can't be done within 30 days, or can't be done because there was leakage, a release, or worse a threat of release, why do I need to remove all the contents of the tank including residuals, inert the tank, and lock fill pipes? This section should be revised to allow for a more pragmatic approach for temporary out-of-service requirements that are specifically applicable to tanks, piping and other UST components. [IOMA]

Response 174: *MassDEP amended other sections of 310 CMR 80.00 to clarify that temporarily out-of-service only applies to the UST system (tank and associated piping). Section 80.42 establishes the procedure for taking a UST system temporarily out-of-service.*

Comment 175, 80.42(2): This section requires notification to the Department within 30 days. However, if a system is taken out of service pursuant to the provisions of Section 80.33(1) or (2) (where there has been leakage, a release, or except for tanks, a threat of release), we believe that notification should be given to the Department within 24 hours, even if a release is not of a concentration reportable under the MCP. The Department needs to take responsibility for reviewing reports of all significant leakage, releases or threats of release and it cannot do so effectively with a 30 day notification delay. [Neponset River Watershed Assoc.]

Response 175: *Tanks get taken temporarily out-of-service for a wide variety of reasons, not just because a release, threat of release or leakage has occurred (in which case the reporting requirements of the MCP would apply). This section establishes a requirement for MassDEP to be notified within 30 days of a tank being taken temporarily out of service, regardless of the reason.*

Comment 176, 80.42(2): This sentence should be edited to state: "Within 30 days after an UST system is taken temporarily out-of-service,…" [IOMA]

Response 176: *MassDEP made this change.*

Comment 177, 80.42(4)(a): Removing all solid and liquid material will be virtually impossible because all of the fuel cannot be removed. This is very difficult if not impossible for USTs that are temporarily taken out of service. These tanks are still in the ground. Typically, all of the sludge cannot be removed unless the tank is tipped and flushed. MassDEP needs to reconsider the assumptions and technical basis for this requirement, and should replace this requirement with a more practical alternative. [IOMA]

Response 177: *MassDEP did not make changes to this section. A tank does not have to be removed from the ground and tipped to remove all the solid and liquid material. There are other acceptable ways to clean out the tank, such as vacuuming. For example, see API 1604, sec. 1, 3 and 4.1-4.4.*

Comment 178, 80.42(4)(h): A new requirement should be added to this section establishing that the Owner or Operator must perform repairs and replacement of UST components and piping in accordance with applicable sections of 80.00. [IOMA]

Response 178: *MassDEP did not make this change. This section establishes the procedures for taking a tank temporarily out-of-service. An Owner or Operator may perform repairs on an UST system that is temporarily out-of-service, but not all tanks taken temporarily out-of-service require repairs.*

Comment 179, 80.42(5) and (6): The requirement in (5) to conduct tightness testing for the tank and piping *within 30 days of* returning the UST system to service should be replaced with a general requirement that tightness testing be conducted *prior to* returning the tank and piping to service. This requirement needs to be aligned with 310 CMR 80.23(2)(c), which references notice being made within 30 days of returning to service.

Similarly, (6) should be edited to require notification to the Department within 30 days *after* returning an UST system to service, rather than 30 days *before* the UST system is returned to service. These sections require owners and operators to submit 30 days advance notice that tank and piping tightness tests were performed, and provide another 30 days prior notice that they plan to return the tank to service, requiring Owners and operators who have worked hard to re-open a station to wait 30 days before they can open for business. This creates an unreasonable delay and hardship for no readily apparent reason. For new stations there is no prior notice requirement. The notice for tanks returning to service should be given to MassDEP within 30 days after its return to service. No prior notice needed. [IOMA]

Response 179: *MassDEP made these changes.*

310 CMR 80.43, Requirements for Removal and Permanent Closure In-Place

Comment 180, 80.43(3)(a)(1): Consider also allowing Registered Professional Sanitary Engineers to make the judgment of structural impairment. Sanitary engineers take the same exam as civil engineers except that the requirements are more stringent in that they are restricted in options for which questions to answer. It is essentially a specialty within civil engineering. [Marcia Berger]

Response 180: *Although by statute, Massachusetts must provide licenses to sanitary engineers, there is no longer a specific professional engineering test for these engineers. Most individuals who want to*

obtain a sanitary engineering license take the test for mechanical engineers or the test for civil engineers. Currently, there are fewer than 300 professional sanitary engineers in Massachusetts. While there may be some cross-over with civil engineering courses of study, it generally does not address the issues of structural integrity to the extent that these other specialties do. Therefore, MassDEP did not make this change.

Comment 181, 80.43(3)(b)2.: A 30-day wait for a presumptive approval is too long, especially given the limited number of instances this will arise, and that the submittal will be signed by a PE. This timeframe should be reduced to ten (10) business days. [IOMA]

Response 181: *MassDEP did not make this change because it needs a sufficient amount of time to review these approvals.*

Comment 182, 80.43(4)(a): The determination of field sampling locations should be determined by the type of regulated substance stored in the UST system and the location of the tank and related piping. Other considerations proposed in the draft regulation (the characteristics of the regulated substance stored in the UST system, the type of backfill in the area, the depth to groundwater and direction of ground water flow, the distance to surface water bodies, and any other factors appropriate for identifying the presence of a release) should be deleted. [IOMA]

Response 182: *MassDEP did not make this change. It is important to evaluate the characteristics of the site where the tank is located in the context of its surroundings when conducting an assessment prior to closure.*

Comment 183, 80.43(4)(b): this section should explicitly allow "other field screening techniques or instruments" to be employed. [IOMA]

Response 183: *MassDEP did not make this change because MassDEP is not aware of any other currently available technique that would be suitable for the assessment. Furthermore, MassDEP must maintain a set of standards under which these assessments are conducted, including the field screening techniques that can be used. As additional techniques are developed and tested, MassDEP may revise this section to include them.*

Comment 184, 80.43(4)(b): Testing should be required to take place with meters calibrated to 50 ppm as benzene in addition to the 100 ppm already required, to overcome the disparities between meter types. [Marcia Berger]

Response 184: *This section does not establish a specific calibration criterion, and MassDEP did not add one to the final regulation.*

Comment 185, 80.43(4)(c): This requirement should be edited to state: "If the Owner or Operator obtains knowledge of a release pursuant to 310 CMR 40.0000, the Owner or Operator shall comply with the notification requirements contained in 310 CMR 40.0300, as applicable." [IOMA]

Response 185: *MassDEP made this change.*

Comment 186, 80.43(4)(c): There needs to be more clarity in how field decisions are made relative to soil testing for leaking tanks. Perhaps setting a testing requirement at a lower field screen detection level (25 ppm is suggested) to address MCP requirements for 120 day reporting in addition to the 72 hour reporting requirement at 100 ppm (in 310 CMR 40.0313(2)) in order to keep consistency among LSPs in how the testing is approached. [Marcia Berger]

Response 186: *The UST regulations address the management of UST systems and UST components. The MCP, which applies independently, addresses responses to releases and threats of release from UST systems and other sources.*

Comment 187 80.43(5): The words "with proper notice" should be added after "The Department may require permanent closure of an UST system at any time,". [IOMA]

Response 187: *MassDEP did not make this change. If an UST system poses a threat to public health, safety or the environment, MassDEP needs to reserve its rights to act immediately if the situation so warrants.*

Comment 188, 80.43(6): Record keeping should include calibration history of photo ionization detectors. [Marcia Berger]

Response 188: *Owners and Operators are required to keep records that they complied with permanent closure requirements, which includes an assessment to measure the presence of regulated substances using a photo ionization detector (PID) or flame ionization detector (FID). Industry standard practice is to calibrate the equipment before each use.*

DELIVERY PROHIBITION

310 CMR 80.48, Delivery Prohibition

Comment 189, 80.48(2): Use of term "violation" short circuits due process considerations for the Owner and Operator. The word "violation" should be replaced with "the conditions described at 310 CMR 80.48(1)(a)-(d)". [IOMA]

Response 189: *MassDEP made this change.*

Comment 190, 80.48(2): Section 80.33 requires tanks and other system components to be taken temporarily out-of-service upon the owner's or operator's obtaining knowledge of a leak, release, or threat of release. Section 80.48, however, significantly delays delivery prohibitions by the Department even when there has been a reportable release under the MCP, by giving the owner and operator 24 hours to report to the Department that an UST system has been taken temporarily out-of-service, and then requiring the Department to issue notification to the owner and operator at least 24 hours before it may issue a delivery prohibition order. Thus *even under conditions of the greatest risk to human health or the environment*, there is up to a 48 hour delay and a minimum 24 hour delay, before deliveries may be prohibited. We cannot understand the reason for this delay. The order and the notification should be done simultaneously. [Neponset River Watershed Assoc.]

Response 190: *The situations in which delivery prohibition is required are established by EPA. The situations in which delivery prohibition may be imposed have been added at MassDEP's discretion. Delivery prohibition or "red-tagging" will stop the delivery of regulated product to a UST system. MassDEP feels strongly that there has to be a process in place to ensure that the Owner and Operator receive notice before this occurs. This prior notice is also a requirement under the EPA Grant Guidelines. MassDEP believes that the incentives provided by M.G.L. c. 21E and the MCP encourage prompt responses to releases which the UST program does not need to duplicate.*

Comment 191, 80.48(3): In addition to authorizing the Department to issue a delivery prohibition if listed equipment is not "installed" or "operating" properly, a prohibition should also be allowed if that equipment is not properly *maintained* in accordance with the regulations. Failure to maintain, at least if done over an extended period of time, could create a significant risk of spill or leakage. [Neponset River Watershed Assoc.]

Response 191: *Delivery prohibition is only one method of enforcement to bring UST systems that are significantly out of compliance with the regulations into compliance. MassDEP has a variety of other tools available to address the problems created by improper maintenance.*

Comment 192, 80.48(6): The words "who has knowledge" should be inserted after "No person" at the beginning of this section, to offer protection to a product deliverer who may not be aware that a station was red-tagged. MassDEP should create a method of notifying product deliverers of stations that have been red-tagged and stations that have returned to compliance to prevent unlawful deliveries. MassDEP should consider using a volunteer list-serve email notification for product deliverers to check prior to deliveries. [IOMA]

Response 192: *MassDEP did not make this change. MassDEP cannot inform regulated substance deliverers if an UST system has been red tagged because MassDEP does not know who delivers regulated substance to each UST facility. There will be a red tag on the fill pipe to notify regulated substance deliverers that deliveries are prohibited and the Owner or Operator should inform their regulated substance deliverer not to deliver regulated substance if there is a delivery prohibition on the UST system.*

Comment 193, 80.48(11): MassDEP should be allowed to authorize delivery of product to an UST system that has received a delivery prohibition notice for the purpose of compliance testing of the system in addition to emergency situations.[[IOMA]

Response 193: *MassDEP made this change.*

THIRD-PARTY INSPECTIONS

310 CMR 80.49, Third-Party Inspections

Comment 194, 80.49: The commenter agrees with the Department's proposal to require annual training for 3rd party inspectors provided by the Department. Providing continued training and maintaining a close relationship between inspectors and the Department keeps everyone involved up to speed with what's going on and the expectations of the Department, and minimizes problems associated with 3rd party inspection programs. [Crompco, Ed Kubinsky]

Response 194: *Thank you for your comment.*

Comment 195, 80.49: The commenter supports the proposed regulatory requirements of this section to provide for and enhance the eligibility requirements, examination and training for Third-Party Inspectors (TPIs). Ensuring that the TPIs who are inspecting UST facilities are experienced, qualified and independent from the UST facilities they are inspecting provides an important mechanism for identifying

and correcting problems at UST facilities, thereby reducing the risk of releases of regulated substances and the impacts and costs of resulting cleanups. [MassDOT]

Response 195: *Thank you for your comment.*

Comment 196, 80.49: In light of the fact that only 32% of Massachusetts owners/operators were in significant operational compliance with all of EPA's SOC requirements in 2012, EPA's minimum requirement to inspect UST facilities every 3 years is clearly inadequate for our state. The proposed regulations are especially problematic in light of the fact that the inspections will be done almost exclusively by Third Party Inspectors, whereas DEP's own inspection plan is only to inspect a random sample of UST facilities (60 out of 4,500 facilities) each year to assess compliance. MassDEP, as far as we know, has no contingency plan if inspections indicate continued poor performance by owners/operators over the next few years.

Since MassDEP is not capable of running a meaningful compliance certification program at the present time, there will be no outside inspection of most UST facilities in between Third-Party Inspectors' visits every three years. We believe that compliance inspections should be conducted annually, with compliance certifications allowed to substitute for a compliance inspection only when the Department's IT upgrade make such certifications meaningful. This requirement should be in effect at least until such time as annual inspections indicate that owners and operators in Massachusetts are in "Significant Operational Compliance" at least as often as the national average. [Neponset River Watershed Association]

Response 196: *MassDEP conducts inspections annually to assess the industry's state of compliance with EPA's SOCs. In addition, MassDEP conducts inspections for various reasons such as following up on notices of noncompliance and responding to complaints. The combination of third-party inspections and compliance certifications together provide an assessment of compliance every 18 months. The federal Grant Guidelines require that UST systems be inspected every three years. MassDEP has adopted this frequency and has supplemented that with triennial requirements for owners' compliance certifications that will be submitted halfway through the three-year period in between third-party inspections.*

Comment 197, 80.49(2)(c): It is the owner's and operator's responsibility to submit the Third-Party Inspection report to MassDEP within 60 days. We see no legitimate justification for such a delay. Although we understand the purpose is to allow owners and operators to address deficiencies before submitting the report to the Department, there is no reason why such remediation cannot take place before the Third-Party Inspector's scheduled inspections or after the Third-Party inspection report has been submitted to MassDEP. We feel that owners and operators should submit the report to the Department within 48 hours of receipt or, better yet, that Third-Party Inspectors submit their reports to MassDEP at the same time they submit them to the owner and operator. Requiring Third-Party

Inspectors to submit their reports directly will eliminate any possibility for an unscrupulous owner or operator to make changes to a Third-Party Inspection Report. [Neponset River Watershed Association]

Response 197: *The major purpose of the Third-Party Inspection Program is to identify compliance issues and have them repaired. If an owner uses the 60 days between the time he or she receives a third-party inspection report and its submittal to MassDEP to address compliance issues, we will consider the program to be successful.*

Comment 198, 80.49(4)(e): If over a five year period a TPI misses one of the annually offered training sessions will he or she be ineligible for renewal? If that is the case, will the Department commit to offering make-up alternative training dates or provide online training sessions, remote access, or video training? Otherwise, this approach may prove problematic for some TPI's who can't attend every annual training session offered over a five year period. Some flexibility is needed for these cases. [IOMA]

Response 198: *MassDEP will attempt to offer the annual training more than once a year. However, if a third-party inspector misses their annual training, especially over multiple years, their certification is at risk. If a third-party inspector cannot renew their certification because of missed trainings, they can re-apply.*

Comment 199, 80.49(5)(a)8.b.: The Third Party Inspector should always inform the Department of conditions in accordance with Section 80.48(1) regardless of whether he/she "receives written confirmation from the owner or operator that it notified the Department," which confirmation may or may not be accurate. [Neponset River Watershed Association]

Response 199: *Owners and Operators have the primary responsibility to report and correct any noncompliance at UST facilities. It is appropriate for MassDEP to structure the process for notification of noncompliance to come first from Owners and Operators. However, MassDEP has required third-party inspectors to report promptly if it cannot confirm reporting by the Owner or Operator. MassDEP clarified that the third-party inspector has to inform the Owner or Operator of the noncompliance within 24 hours of discovering the noncompliance.*

Comment 200a, 80.49(6): We support the concept for the UST Program design of a "three-legged stool", with the legs being Owners/Operators, third-party inspectors, and MassDEP, and recognize the importance for third-party inspectors to remain independent. However, the conflict of interest standard proposed in 310 CMR 80.49(6) does not satisfy this objective. This section proposes only to prohibit a third-party inspector who is an employee or a contractor of the UST facility, during the year immediately preceding the inspection, from completing an inspection. This proposal only addresses conflicts of interest in one of the three years of a third-party inspection cycle. An example of where the three-legged stool vision falls short is in a circumstance where a third-party inspector, acting as an employee

or contractor (e.g., who conducts required annual UST system maintenance), performs work in the two years following a third-party inspection. Then in year three (i.e., the year preceding the next third party inspection), the inspector/contractor could simply fail to perform any annual maintenance that may be required. While the lack of required maintenance would initially be identified as a failure of the third-party inspection, the deficiency could be addressed immediately after the inspection was completed. This third-party inspector might meet the requirements of the regulation but is not satisfying the intent by avoiding a conflict of interest. While such conflicts of interest could be evaluated by MassDEP if they are identified, a more effective and objective approach would be to simply prohibit a third-party inspector from performing any work (such as an employee or contractor of the UST Owner/Operator) on an UST system during the entire three-year inspection cycle.

It is important to understand the context in which these conflict of interest concerns are presented. A good example is the fact that many UST service contractors were already working with UST Owner/Operators to fulfill their annual compliance responsibilities (e.g., vapor recovery at motor vehicle fueling stations) prior to the establishment of the third-party inspection requirements outlined in 527 CMR 9.00. Therefore, the independence of many third-party inspectors may have been obtained from the onset of the UST TPI requirements, and this may continue today. The implementation of the UST Operator Training requirements (310 CMR 80.01-80.02) provides another example of cases where pre-existing employer/contractor relationships may have jeopardized the intent of these proposed regulations. MassDEP has the opportunity to stabilize the integrity of the three-legged stool vision of the UST program by ensuring that third-party inspectors are truly independent of any employer/contractor relationships. [Aaron Gilbert, UST Inspection Services]

Comment 200b, 80.49(6): These requirements fail to deal with the potential conflict of interest that occurs when a Third-Party Inspector inspects one facility but also has a relationship described in subsections (a)-(e) at a different UST facility *of the same owner or operator*. The Background Document on page 12 appears to indicate that most gas station owners and operators own or operate more than one facility. If the Third Party Inspector does not play down violations at the facility he/she is inspecting, an unscrupulous owner or operator might no longer hire him/her to do inspections or other work at any of his/her UST facilities. Thus the prohibitions in this section should apply to all facilities owned or operated by the same person or company. Also, the prohibitions should continue for at least six months after a Third-Party Inspection. There is clear potential for conflict of interest if a Third-Party Inspector has a job or contract or ownership offer pending from the owner or operator whose facility he/she is inspecting. [Neponset River Watershed Association]

Response 200a and b*: This section of the regulation requires that third-party inspectors be independent of the UST system's Owner, Operator, and cannot be the same person who maintains the UST system. This section was developed to balance MassDEP's need for independent assessments of UST system compliance with the business needs of Owners and Operators to be able to contract for needed services (and we understand that third-party inspectors are hired under contracts). MassDEP believes that the requirements of this section provide for sufficient independence so that third-party inspection reports will have value for Owners and Operators and for the Department.*

Comment 201, 80.49(6)(b): It is not clear whether "who has performed work on the UST system" modifies the Owner or Operator, or the TPI. Please clarify. [IOMA]

Response 201: *310 CMR 80.49(6)(b) must be read with 310 CMR 80.49(6) Prohibitions. This section of the regulations states that at the time of a third-party inspection and for the year immediately preceding the third-party inspection, the* ***TPI cannot be*** *a relative (the spouse, parent, child, brother of sister…….) The prohibition applies to the third-party inspector and not the Owner or Operator.*

Comment 202a, 80.49(6)(c): This section prohibits any person who has done work at the facility under contract or otherwise to conduct the third party inspection. This section was designed to prevent conflict of interest and in doing so enables a company of more than one employee to conduct the inspection in which that company has an interest (i.e. testing & service companies). The commenter currently holds the necessary certificates to perform testing at the facilities at which he conducts business, and there is no question of a conflict of interest. The commenter maintains re-certifications as necessary by the manufacturer of the equipment used to conduct testing, and maintains continual education in this evolving industry. The commenter is also a Massachusetts "Certified Third Party Inspector", and has conducted many inspections. He has no interest in the day to day operations of any facility where he conducts business, and usually visits these facilities once a year. This appears to be a method of regulating "integrity." 310 CMR 80.49 6(e) [Compliance Solutions, Berberian]

Comment 202b, 80.49(6)(c): MassDEP should delete the requirement in 80.49(6)(c) that a third-party inspector shall not be an individual who has performed work at the UST facility s/he is inspecting, under contract or otherwise, other than a contractor who is the third-party inspector. Other states (ME as an example) require that periodic tests and services performed at a site are completed by or under the direct supervision of a third-party installer or inspector. ME DEP even requires the third-party inspector to perform annual tests (cathodic protection, leak detection equipment) at the time the inspection is performed, as these individuals are typically a higher-caliber individual with superior integrity, intimate knowledge of and a higher understanding of these sites and systems. A third-party inspector is more qualified than a typical technician that performs services at UST facilities and should be the preferred individual to perform routine work at a site. In addition, the requirement to not allow an inspector to perform services at sites that they may inspect would result in increased costs to owner/operators to hire additional/separate crews and/or service providers to complete required activities at their facilities. None of the other states in which this commenter provides third-party inspectors and performs third-party inspections (PA, MD, and ME) limit the work that can be performed by the third-party inspector due to a conflict of interest. There is no reason why third-party inspectors who are also testers and installers should be restricted from offering all of the services they are qualified to perform to UST owner/operators. [Crompco, Ed Kubinsky]

Response 202a and b: *The regulation establishes standards to ensure that there is no conflict between the people who do work at the facility (operate, maintain, test) and the third-party inspector. There is value in having a person who did not do work at an UST facility (as an employee or under contract) conduct the third-party inspection. Not only is the third-party inspector not inspecting his/her own work, but s/he is looking at the UST facility with "fresh eyes", and not with any bias towards the UST facility.*

Comment 203, 80.49(6)(e): The prohibition on "any person or employee of a person, having **any** financial interest in or daily on site responsibilities for the UST system the third party inspector is inspecting" appears to contradict 6(c), and would indicate that any person affiliated with UST facility in which financial compensation was received would be exempt. I would request that companies that are not involved in the day to day operation of the UST system be exempt from this section or make available a waiver on a case by case basis. [IOMA]

Response 203: *310 CMR 80.49(6) addresses prohibitions on who may serve as a third-party inspector. These two prohibitions are separate and distinct, and there are no exemptions from them. The prohibition found at 310 CMR 80.49(6)(e) states that the third-party inspector may not be person, or an employee of a person, having any financial interest in the UST system being inspected, whereas the prohibition in 80.49(6)(c) states that the third-party inspector cannot be an employee of the UST facility that is being inspected. Although a broad interpretation of the term 'financial interest' may include being an employee, both prohibitions are describing those individuals who cannot serve as a third-party inspector for a particular UST system, and an employee who may not serve as a third-party inspector.*

Comment 204, 80.49(7): While 310 CMR 80.49(6) outlines conflict of interest standards for Third-party inspectors, the proposed prohibitions may not be known by UST Owners/Operators. If a third-party inspector misinterprets this prohibition and an Owner/Operator is not aware of this conflict, then two legs of the three legged stool have been compromised. This deficiency can be addressed by adding a statement to the Owner/Operator certification in section 80.49(7)(e) which requires an Owner/Operator to verify that the third-party inspector was not an employee or contractor during the three-year period preceding the third-part inspection cycle. [Aaron Gilbert, UST Inspection Services, Inc.]

Response 204: *MassDEP did not make this change. Owners and Operators, as well as third-party inspectors are required to comply with 310 CMR 80.49(6). If there is a question about whether a prohibition applies, it is incumbent upon both parties to make that determination. If a third-party inspector does not think an Owner or Operator is aware of these requirements, the inspector should advise the owner or operator of the prohibitions.*

Additional Clarifications:

- 80.49(4)(d)2. – Clarified that a person taking the third-party inspector exam has to take *and pass* the exam to become a third-party inspector.

- 80.49(7)(c)3.b. – Clarified that the RTC completion report has to be submitted within 30 days of the TPI submission.

ENFORCEMENT AND APPEALS

310 CMR 80.50, Enforcement and Appeals

Comment 205, 80.50(5): The subsection on adjudicatory appeals does not state, as it should, that Departmental Enforcement Orders must be obeyed during the pendency of an adjudicatory hearing. Without such a provision, there can be no timely enforcement of regulatory requirements that reduce or eliminate even the greatest or most imminent risks. The same is true regarding TPI requests for Adjudicatory Hearings; denial, suspension or revocation by the Department should bar the TPI from conducting third party inspections during the pendency of the adjudicatory hearing. [Neponset River Watershed Assoc.]

Response 205: *It is rare that an Order stays in effect during the pendency of an adjudicatory appeal. However, in the case of delivery prohibition, the federal program requirements mandate that orders go into effect "as soon as practicable". Therefore, 310 CMR 80.48(12) states that Owners and Operators must comply with delivery prohibition orders pending any resolution through the hearing process. MassDEP has the statutory authority in M.G.L. c. 21O to issue such orders. These orders will be issued to Owners and Operators with serious violations.*

FINANCIAL RESPONSIBILITY

310 CMR 80.52, Requirements for Amount and Scope of Financial Responsibility

Comment 206 80.52(7): The requirement to demonstrate financial responsibility should be imposed when an Owner acquires the tank(s) that exceed 100, as well as installing the tank(s) that exceed 100. Crossing this threshold is more likely to be the result of an acquisition than as an installation. [IOMA]

Response 206: *MassDEP made this change.*

310 CMR 80.61, Release from Financial Responsibility Requirements

Comment 207, 80.61(3): The words "pertaining to an UST system" should be added at the end of this sentence. [IOMA]

Response 207: *MassDEP already made this change in the public hearing draft.*

Additional clarifications:

- 80.58 – Clarified that Operators can submit financial responsibility documents to account for various business models.
- 80.58(1) – Deleted the requirement that Owners and Operators have to submit insurance, surety bonds, letters of credit and trusts to MassDEP because MassDEP will obtain sufficient information of these financial responsibility mechanisms through the registration process.
- 80.58(2), (3) and (4) – Clarified that updated financial test and corporate guarantee documentation must be submitted with updated registrations.

B. RESPONSES TO COMMENTS on Amendments to 310 CMR 30.000

Comment 208: The proposed regulatory amendments appear reasonable; they apply 310 CMR 80 to USTs for the storage of Waste Oil and Used Oil Fuel. [LSPA]

Response 208: *Thank you for your comment*.

310 CMR 30.694: Containment and Detection of Releases

Comment 209, 310 CMR 30.694(4): delete "either" at the end of the introductory sentence, and delete "or" at the end of subparagraph (a)3. [IOMA]

Response 209: *MassDEP made this change in the draft regulation and it will be in the final regulation as well.*

C. RESPONSES TO COMMENTS ON AMENDMENTS TO 310 CMR 70.00

Comment 210: The proposed regulatory amendments appear reasonable. UST systems become ERP facilities or units under 310 CMR 70, but the performance standards are referenced back to 310 CMR 80. The necessary certification schedule and conditions are contained in 310 CMR 80.34. [LSPA]

Response 210: *Thank you for your comment. The specific performance standards and certification schedules for each ERP sector are contained in the technical regulations that apply to each sector. This section contains requirements that apply to all ERP sectors*.

310 CMR 70.02, Definition of "Responsible Official"

Comment 211, 70.02(d): This definition should be revised to allow for the same delegation from a senior official to a duly authorized representative for overall operation of the facility or unit as is currently allowed at 310 CMR 70.02(a) for a corporation. 310 CMR 70.02(d) should be amended by adding "or a representative of the above entities who has been duly authorized in writing provided the representative is responsible for overall operation of the facility or unit". This revision would facilitate the efficient administration of the responsible official requirement within a large public agency in the same way that it does for a large corporation under the current regulation, while maintaining the same level of accountability for both public and private entities. [MassDOT]

Response 211: *MassDEP will take this comment under advisement. This will affect all the Environmental Results Programs, so MassDEP will consider this change if and when is makes further amendments to that regulation.*

D. RESPONSES TO COMMENTS ON AMENDMENTS TO 310 CMR 80.01-02

310 CMR 80.01 and 80.02, OPERATOR TRAINING

Comment 212: The proposed regulatory amendments seem reasonable, and serve to move these two regulations into the framework of 310 CMR 80.00, with necessary reference changes. [LSPA]

Response: *Thank you for your comment.*

E. OTHER COMMENTS

Need for Training UST System Owners and Operators

Comment 213a: Some of the sections of the proposed regulations are somewhat difficult to understand, and I believe that average tank owners will find it almost impossible to understand what is required of them. Outreach to tank owners about new requirements to certify operators for every UST system fell short, and some owners and operators do not know what is expected of them. We need a more detailed outreach and training program (closer to how the Stage II vapor recovery program was rolled out in the early '90s. I hope that MassDEP will not only conduct such an outreach program, but also develop a work book for UST system owners and operators, to make it easier to understand what would be required and how they can stay in compliance. [Bruce Garrett]

Comment 213b: MassDEP needs to put together a "first-class" training program to reach all UST Owners and Operators. These rules are detailed, complex and substantial. One important element for the success of this program will lie in the ability of the Department to develop and implement easy-to-understand training sessions and an ERP-style workbook as outreach materials for owners and operators. MassDEP should also publish a document that outlines the differences and changes from DFS

to DEP regulations. This was recently done by the State of New Hampshire, and proved to be extremely helpful understanding and transitioning to new regulatory requirements. To get the word out, training sessions need to be held at different times and at multiple locations across the state. Several sessions should be offered during the evening so owners and operators can choose to attend without having to leave their businesses. [IOMA + Joe Station Owner]

Comment 213c: DEP should provide comprehensive outreach and training programs concurrent with the new regulations and any enforcement should be delayed until the outreach program and training have been completed. Without DEP-sponsored outreach and training, our members may have to hire consultants to even understand what the requirements are and how to apply them to their facility, which will incur additional expense for small businesses which can ill afford it. [MA Marine Trade Association]

Comment 213d: Notification, explanation, and compliance training are a concern. Businesses sometimes learn of regulatory requirements and changes well after they have become effective. Any consideration for notifying and holding informative sessions to help operators become aware of, and understand the rules will benefit the cause greatly. Achieving this will eliminate the potential of non-compliance due to lack of knowledge. [Cape Cod Marine Trades Association]

Response 213a-d: *MassDEP will conduct outreach and training after the final regulations are promulgated. In addition, we plan to develop a workbook for the compliance certification that will assist Owners and Operators in becoming familiar with the new UST regulations and the equipment at their UST facilities. MassDEP also looks to trade associations, such as IOMA which has been very involved in the development of these regulations, and the Marine Trade Association to do outreach and training with their members.*

Comment 214: Most marinas and other small businesses operating a fueling system at their facility find it difficult to understand and keep updated of the ever-changing regulatory requirements. Commonly, the rules and requirements change without adequate communication, which potentially makes it difficult for the facility to comply. In order to remain compliant, businesses must be made aware prior to the changes taking effect and prior to enforcement. [Cape Code Marine Trades Association]

Response 214: *MassDEP has taken many steps to make UST system Owners and Operators aware of this regulatory development effort. Since the spring of 2010 MassDEP has been working with stakeholders to develop the draft regulations. Notices of meetings, drafts of regulations and general information have been available on MassDEP's website since July of 2009. MassDEP conducted compliance assistance visits to every UST facility in the Commonwealth after the Department took over the program in 2009. Before MassDEP held public hearings on the current draft of the UST regulations, it published notice of the public comment period in the Boston Globe and on our website. We also sent emails to stakeholders.*

Comment 215: Once the regulations become effective, MassDEP should not take enforcement actions and assess penalties until the training is completed and owners and operators have gained enough practical experience by applying and learning these new rules. The agency should maintain a "compliance assistance" posture over an 18-month break-in period, as opposed to implementing a traditional compliance and enforcement program once the regulations become effective. [IOMA + Joe Station Owner]

Response 215: *MassDEP has a robust outreach program for most of our programs, and we will be preparing outreach programs and providing third-party inspector training for the UST program. MassDEP uses enforcement discretion as appropriate for all of its programs. The majority of these regulations were taken from 527 CMR 9.00, the Department of Fire Services UST regulations, which have been in effect for approximately 30 years, thereby making the transition to the MassDEP version of these regulations found at 310 CMR 80.00 as seamless as possible.*

Implications for M.G.L. c. 21J Reimbursements for Cleanups

Comment 216: When MassDEP issues a Notice of Non-Compliance with the UST rules, it sends a copy of this Notice to the Underground Storage Tank Petroleum Cleanup Fund Administrative Review Board (the "21J Board"). This Board in turn may call into question the owner's or operator's eligibility to receive or continue to receive reimbursement under the Fund, and therefore potentially may make them unable to demonstrate that they meet the financial responsibility requirements of 310 CMR 80.00 as well. MassDEP should interact with the 21J Board and its host agency, the Department of Revenue, to continue to promote the fund and promote compliance without unduly jeopardizing an owner's or operator's eligibility status under the fund and corresponding ability to demonstrate financial responsibility, without due process and opportunities to return to compliance. The great track record of this fund in providing reimbursements for cleanups since its inception in 1995 could be compromised if owners' and operators' eligibility with the fund becomes jeopardized for minor compliance issues that may not necessarily be significant. Paperwork deficiencies should not cause revocation of someone's eligibility under the fund. [Brian Moran for IOMA]

Response 216: *MassDEP has worked with DOR to put a mechanism in place to deal with this issue. However, if the commenter has further questions or concerns, he should contact DOR, as DOR is the agency that decides how to weigh notices of noncompliance in making decisions about the 21J program.*

Establish a standing UST Advisory Committee

Comment 217: There is value in continued communication between the regulated community and the Department on this substantial regulatory program. IOMA requests that the Department voluntarily establish a UST Advisory Committee, similar to the format of other agency program committees, vis-à-

vis the Waste Site Cleanup Superfund Advisory Committee, the Solid and Hazardous Waste Advisory Committee, and the Commissioner's Advisory Committee. This Committee will provide a two-way forum for program stakeholders to bring forward implementation issues and for the Department to propose solutions, and present future programmatic improvements to the regulated community. An UST Advisory Committee will be another cornerstone to ensure the successful implementation and continued operation of the program. [IOMA]

Response 217: *MassDEP will take this under consideration.*

Typographical Corrections

- The definitions use initial caps inconsistently
- 80.49(2)(c): At the end of the paragraph following the number "3" should there be two periods. [US EPA-Region 1, Stuart Gray]
- 80.54, page 99, fourth paragraph e.: The closing bracket at the end of the paragraph seems to be missing an opening bracket. [US EPA- Region 1, Stuart Gray]

MassDEP has made all of these corrections.